TEXAS REGISTER

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Annaliese M. Fisher

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for September 23, 2008

Appointed as Presiding Judge of the Fourth Administrative Judicial Region for a term to expire four years from the date of qualification, David Peeples of San Antonio (Judge Peeples is being reappointed).

Appointed to the State Seed and Plant Board, effective October 6, 2008, for a term to expire October 6, 2010, Nick Bamert of Muleshoe (Mr. Bamert is being reappointed).

Appointed to the State Seed and Plant Board, effective October 6, 2008, for a term to expire October 6, 2010, Kelly Book of Bastrop (Ms. Book is being reappointed).

Appointed to the State Seed and Plant Board, effective October 6, 2008, for a term to expire October 6, 2010, James Wahrmund of Fredericksburg (Mr. Wahrmund is being reappointed).

Appointed to the Committee on Licensing Standards, pursuant to SB 758, 80th Legislature, Regular Session for a term to expire February 1, 2009, Dan Adams, Jr. of Amarillo.

Appointed to the Committee on Licensing Standards, pursuant to SB 758, 80th Legislature, Regular Session for a term to expire February 1, 2009, Karyn Purvis of Fort Worth. Dr. Purvis will serve as presiding officer of the committee.

Appointed to the Committee on Licensing Standards, pursuant to SB 758, 80th Legislature, Regular Session for a term to expire February 1, 2009, LeCresha Peters of Pearland.

Appointed to the Committee on Licensing Standards, pursuant to SB 758, 80th Legislature, Regular Session for a term to expire February 1, 2011, Ann Stanley of Austin.

Appointed to the Committee on Licensing Standards, pursuant to SB 758, 80th Legislature, Regular Session for a term to expire February 1, 2011, Kimberly Kofron of Round Rock.

Appointed to the Committee on Licensing Standards, pursuant to SB 758, 80th Legislature, Regular Session for a term to expire February 1, 2011, Adriene Driggers of San Antonio.

Appointed to the Committee on Licensing Standards, pursuant to SB 758, 80th Legislature, Regular Session for a term to expire February 1, 2011, Sasha Rasco of Austin.

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2009, Alfred Sulak of Orchard (replacing Sandra Cararas of McAllen whose term expired).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2009, Carl M. Russell, Jr. of Lubbock (replacing A. John Yoggerst of San Antonio whose term expired).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2009, Sockalingam (Sam) Kannappan of Houston (Mr. Kannappan is being reappointed).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2010, Ronald J. Suchecki, Jr. of China Spring (Mr. Suchecki is being reappointed).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2010, Richard Gerard of Livingston (Mr. Gerard is being reappointed).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2010, Janet Meyers of Aubrey (Ms. Meyers is being reappointed).

Appointed as Presiding Officer of the Cameron County Regional Mobility Authority for a term to expire February 1, 2010, David E. Allex of Harlingen (Mr. Allex is being reappointed).

Appointed to the Red River Authority of Texas Board of Directors for a term to expire August 11, 2011, Nathan James Bell, IV of Paris (Mr. Bell is being reappointed).

Appointed to the Red River Authority of Texas Board of Directors for a term to expire August 11, 2011, Billy Mayfield McCraw, II of Telephone (replacing Janie Matteson of De Kalb whose term expired).

Rick Perry, Governor

TRD-200805220

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Proclamation 41-3163

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, did issue an Emergency Disaster Proclamation on September 8, 2008, as Hurricane Ike posed a threat of imminent disaster along the Texas Coast and in the counties of Anderson, Angelina, Aransas, Archer, Austin, Bee, Bell, Bexar, Bowie, Brazoria, Brazos, Brooks, Burleson, Calhoun, Cameron, Cass, Chambers, Cherokee, Collin, Colorado, Comal, Coryell, Dallas, Denton, DeWitt, Ellis, El Paso, Fort Bend, Franklin, Freestone, Galveston, Goliad, Grayson, Gregg, Grimes, Hardin, Harris, Harrison, Henderson, Hidalgo, Hill, Hopkins, Houston, Hunt, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Kaufman, Kenedy, Kleberg, Lamar, Lavaca, Leon, Liberty, Lubbock, Madison, Matagorda, McLennan, Milam, Montgomery, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Parker, Polk, Potter, Randall, Refugio, Robertson, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Starr, Tarrant, Titus, Tom Green, Travis, Trinity, Tyler, Van Zandt, Victoria, Waller, Walker, Washington, Webb, Wharton, Willacy, Williamson, Wise and Wood, beginning September 7, 2008, and continuing.

WHEREAS, Hurricane Ike struck the State of Texas on September 13, 2008, causing substantial destruction in South and East Texas; and

WHEREAS, extensive damage in Texas as a result of Hurricane Ike has caused widespread power outages; and

WHEREAS, the expeditious restoration of electrical services is crucial for the health, safety, and welfare of the citizens of Texas, and for the

preservation of life and property in the recovery efforts from the devastating effects of Hurricane Ike; and

WHEREAS, Texas Government Code, Section 418.017, provides that the Governor may use all available resources of state government and of political subdivisions that are reasonably necessary to cope with a disaster; temporarily reassign resources, personnel, or functions of state executive departments and agencies or their units for the purpose of performing or facilitating emergency services; and commandeer or use any private property necessary to cope with the disaster;

THEREFORE, by virtue of the authority vested in me by the constitution and laws of the State of Texas, I do hereby order the following:

Temporary Utility Connections. Utilities located in the State of Texas and regulated by the Public Utility Commission of Texas are hereby authorized to make temporary connections at the distribution and transmission level, voltages such as 12.5 kV, 13.2 kV, 25 kV, 69 kV, 138 kV, 230 kV, to restore power to CenterPoint Energy Houston Electric, Inc.; Entergy Texas, Inc.; Houston County Electric Cooperative, Inc.; Oncor Electric Delivery Company, LLC; electric cooperatives; and municipal customers within the State of Texas. This temporary action will allow restoration of critical infrastructure facilities such as hospitals, law enforcement facilities, water pumping stations, fire stations, water treatment plants, sewer facilities, nursing homes, schools, and other customers that have been without power as a result of Hurricane Ike.

Authorization to Enter. Utilities located in the State of Texas and regulated by the Public Utility Commission of Texas are hereby authorized to enter and use private property as necessary for the limited purpose of connecting power lines and reconstructing the electric utility grid, including but not limited to establishing temporary above-ground and underground power lines, switching and transforming facilities, and transporting materials and equipment necessary to the restoration of electrical power.

Protection of Private Property Rights. Those utilities are further directed to undertake the restoration effort in a manner that maximizes the use of existing state and local government resources, easements, and property to preserve the property and privacy rights of affected Texas property owners to the greatest extent possible.

Public Easements. State and local political subdivisions and special districts are hereby directed to surrender existing highway, utility, and other public easements and state-owned or controlled land for the same purposes.

This proclamation shall continue in effect as long as a state of emergency and the Emergency Disaster Proclamation issued on September 8, 2008, remain in effect, unless rescinded earlier by my order.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 15th day of September, 2008.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-200805221

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Proclamation 41-3164

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, do hereby amend my September 12, 2008, Proclamation, which suspended the collection of all state and local hotel occupancy taxes.

WHEREAS, I did issue an Emergency Disaster Proclamation on September 8, 2008, as Hurricane Ike posed a threat of imminent disaster along the Texas Coast and in specified Texas counties;

WHEREAS, Hurricane Ike struck the State of Texas on September 13, 2008, causing substantial destruction in South and East Texas; and

WHEREAS, Hurricane Ike continues to create a temporary housing emergency in the State of Texas.

THEREFORE, in accordance with the Emergency Disaster Proclamation and with the authority vested in me by Section 418.020 of the Texas Government Code, I do hereby suspend the collection of all state and local hotel occupancy taxes under Chapters 156, 351 and 352 of the Texas Tax Code, Chapters 334, 335 and 383 of the Local Government Code, as well as any other state law authority that authorizes a local hotel occupancy tax, from the victims of Hurricane Ike, for a period beginning on September 8, 2008, and ending on October 14, 2008.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 17th day of September, 2008.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-200805222

♦ ♦ ♦

Proclamation 41-3165

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby certify that severe storms and flooding has caused a levee overflow posing a threat of imminent disaster in the county of Presidio beginning September 7, 2008, and continuing.

The overflow of said levee was caused by an uncontrolled release of water by the Mexican government from the Luis Leon Reservoir, in the Rio Conchos which flows into the Rio Grande River in Presidio County.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the county listed above based on the existence of such disaster, and direct that all necessary measures both public and private as authorized under Section 418.017 of the code be implemented to meet that threat.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 18th day of September, 2008.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-200805223

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinion

RQ-0742-GA

Requestor:

The Honorable Leo Berman

Chair, Committee on Elections

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether, under the federal Constitution, the state of Texas may permit undocumented persons to receive the benefit of instate tuition at Texas state colleges and universities (RQ-0742-GA)

Briefs requested by October 31, 2008

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200805284
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: October 1, 2008

♦ ♦ ♦

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 133. LICENSING

SUBCHAPTER B. PROFESSIONAL ENGINEER LICENSES

22 TAC §133.12

The Texas Board of Professional Engineers adopts new §133.12, concerning an Emergency Temporary License, on an emergency basis.

The new rule outlines the process and conditions the Board will use to issue an Emergency Temporary License. This new license type will be only available to those professional engineers licensed in a U.S. jurisdiction other than Texas that intend on performing engineering services in Texas counties affected by Hurricane Ike. A license issued under this rule will be temporary and be valid for 180 days from the date issued. A simplified application process is outlined in the rule. The new application process will be available through March 31, 2009, and may be extended as needed through further rulemaking by the Board.

As a result of the proclamation by the Governor of the State of Texas dated September 8, 2008, declaring a state of emergency due to Hurricane Ike, and the Federal Emergency Management Agency (FEMA) disaster declaration FEMA-1791-DR, the Texas Board of Professional Engineers has determined that the conditions outlined in §2001.034 of the Texas Government Code concerning Emergency Rulemaking have been satisfied to adopt a new rule concerning the issuance of Emergency Temporary Licenses.

The new rule is adopted on an emergency basis under the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

§133.12. Emergency Temporary License.

(a) Per §1001.310 of the Act and in conjunction with the Disaster Declaration FEMA-1791-DR issued by the Federal Emergency Management Agency (FEMA) the board may issue an Emergency Temporary License to individuals who meet the following requirements:

(1) Applicant is currently licensed as a Professional Engineer, is in good standing, and has no current or pending disciplinary actions in any U.S. state or territory;

(2) Applicant has submitted to the board in writing an Emergency Temporary License application described in this section; and

(3) Applicant intends to do engineering work in Texas only in the counties included in the FEMA disaster declaration for Hurricane Ike (FEMA-1791-DR as amended).

(b) An Emergency Temporary License Application shall consist of the following items:

(1) Emergency Temporary License Application form;

(2) passing score on the Texas Engineering Professional Conduct and Ethics Examination;

(3) verification of current licensure and current disciplinary status from home jurisdiction or NCEES Council Record; and

(4) application fee.

(c) Except as provided in this section, an Emergency Temporary License holder shall be subject to all other rules, laws, and legal requirements to which a holder of a standard license is subject.

(d) An Emergency Temporary License issued under this section shall be valid for 180 days from the date the license is issued and may not be renewed.

(e) An applicant that has been issued an Emergency Temporary License may apply for a standard license using the standard license application process.

(f) Emergency Temporary License applications may be accepted through March 31, 2009.

(g) Engineers issued an Emergency Temporary License under this section are only permitted to offer or perform engineering services for projects located in the counties included in the FEMA disaster declaration for Hurricane Ike (FEMA-1791-DR as amended).

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 25, 2008.

TRD-200805158
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective Date: September 25, 2008
Expiration Date: January 22, 2009
For further information, please call: (512) 440-7723

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PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.9

The Texas Appraiser Licensing and Certification Board adopts on an emergency basis amendments to §153.9, concerning Applications by adding new subsections (i) - (k).

The amendments concern the time period for satisfaction of application requirements for persons who reside or whose principal place of business is in Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, and Washington Counties and who were significantly affected by Hurricane Ike.

The amendments outline the conditions under which the board will extend the expiration date of the application for a period of four months in order to complete any examination requirement. The provisions do not apply to any application that expired prior to September 7, 2008.

As a result of the proclamations by the Governor of the State of Texas dated September 7, and 12, 2008, declaring a state of emergency due to Hurricane Ike, the Texas Appraiser Licensing and Certification Board has determined that the conditions outlined in §2001.034 of the Texas Government Code concerning emergency rulemaking have been satisfied to adopt on an emergency basis amendments to §153.9 concerning Applications for an appraiser license or certification from applicants residing or whose principal place of business is in the Texas counties detailed above and who were significantly affected by Hurricane Ike.

The amendments are adopted on an emergency basis under Texas Appraiser Licensing and Certification Act (the Act), Texas Occupations Code, §1103.151, which authorizes the Texas Appraiser Licensing and Certification Board to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this emergency adoption is Texas Occupations Code, Chapter 1103. No other statute, code or article is affected by the adopted amendments.

§153.9. Applications.

(a) - (h) (No change.)

(i) By the proclamation issued September 7, 2008, and amended September 12, 2008, by the Governor of the State of Texas and notwithstanding any provisions of the Act or Rules to the contrary, the Board may extend the expiration date of an application for a license, certification, or approval for an existing applicant who satisfies the following criteria:

(1) the applicant resides or has a primary place of business in Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, or Washington County and was significantly impacted by Hurricane Ike;

(2) as a result of the disaster, the applicant is unable to satisfy any examination requirement within one year of the date the application was received by the Board; and

(3) the existing application expires on or before February 28, 2009.

(j) If an applicant meets the criteria in subsection (i) of this section, the expiration date of the application is extended for an additional four month period and the applicant must complete all requirements within such four month period or the application shall be considered void and subject to no further evaluation or processing.

(k) Subsections (i) and (j) of this section do not apply to an application that expired prior to September 7, 2008.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 24, 2008.

TRD-200805134
Loretta R. DeHay
Counsel
Texas Appraiser Licensing and Certification Board
Effective Date: September 24, 2008
Expiration Date: January 21, 2009
For further information, please call: (512) 465-3900

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22 TAC §153.17

The Texas Appraiser Licensing and Certification Board adopts on an emergency basis amendments to §153.17, concerning Renewal or Extension of Certification and License or Renewal of Trainee Approval by adding new subsections (f) - (i).

The amendments concern satisfaction of Appraiser Continuing Education (ACE); payment of renewal fees, including national registry fees, and other renewal requirements for licensed and certified appraisers and appraiser trainees (licensees) who reside or whose principal place of business is in Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, and Washington Counties and who were significantly affected by Hurricane Ike.

The amendments outline the conditions under which the board will defer the renewal requirements for licensees who are unable to timely renew and otherwise meet all renewal requirements for an active license because of Hurricane Ike. The amendments permit affected licensees to take up to four months to complete all of the renewal requirements under Chapter 1103 of the Texas Occupations Code. The extension option will be available only for licensees who satisfy the criteria in the rule and whose licenses expire between September 30, 2008 and February 28, 2009. For licenses that expire after that period, the license re-

newal is subject to the Act and existing Rules. If a licensee fails to pay the renewal fees within the four month period, the license will expire at the end of the four month period. If a licensee fails to complete ACE requirements, the license will go inactive at the end of the four month period until such time that the licensee meets all renewal requirements.

As a result of the proclamations by the Governor of the State of Texas dated September 7, and 12, 2008, declaring a state of emergency due to Hurricane Ike, the Texas Appraiser Licensing and Certification Board has determined that the conditions outlined in §2001.034 of the Texas Government Code concerning emergency rulemaking have been satisfied to adopt on an emergency basis amendments to §153.17, concerning Renewal or Extension of Certification and License or Renewal of Trainee Approval for licensees residing in or whose principal place of business is in any of the Texas counties detailed above who were significantly affected by Hurricane Ike.

The amendments are adopted on an emergency basis under Texas Appraiser Licensing and Certification Act (the Act), Texas Occupations Code, §11033.151, which authorizes the Texas Appraiser Licensing and Certification Board to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this emergency adoption is Texas Occupations Code, Chapter 1103. No other statute, code or article is affected by the adopted amendments.

§153.17. Renewal or Extension of Certification and License or Renewal of Trainee Approval.

(a) - (e) (No change.)

(f) Renewal requirements for a license or registration significantly impacted by Hurricane Ike. By the proclamation issued September 7, 2008, and amended September 12, 2008, by the Governor of the State of Texas and notwithstanding any provisions of the Act or Rules to the contrary, the Board may defer the renewal requirements for a current license, certification, or approval and maintain the license or certification on active status for a licensed or certified appraiser or trainee (licensee) who satisfies the following criteria:

(1) The licensee resides or has a primary place of business in Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, or Washington County and was significantly impacted by Hurricane Ike;

(2) As a result of the disaster, the licensee is unable to perform one or more of the following renewal requirements before the original expiration date of the current license:

(A) complete all applicable appraiser continuing education requirements; or

(B) pay renewal fees, including federal registry fees; and

(3) The original expiration date of the current license, certification, or approval is between September 30, 2008 and February 28, 2009.

(g) If a licensee subject to subsection (f) of this section is unable to perform any renewal requirement prior to the original expiration date of the current license, certification, or approval, the license or certification is extended for an additional four month period and the licensee must complete all requirements within such four month period.

(h) If a licensee subject to subsection (f) of this section fails to file the required renewal application and pay the required fees on or before the end of the four month period, the license will expire at the end of the four month period. If, on or before the end of the four month period a licensee has filed the required renewal application and paid the required renewal fees but has failed to complete all ACE requirements, the license will revert to inactive status at the end of the four month period until such time that the licensee completes all renewal requirements.

(i) A license, certification, or approval that is renewed under subsection (f) of this section expires 24 months after the original expiration date of the current license, certification, or approval. ACE courses completed after the original expiration date of the current license, certification, or approval under this provision may not be applied to meet ACE requirements for the following renewal of the license, certification, or approval.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 24, 2008.

TRD-200805135
Loretta R. DeHay
Counsel
Texas Appraiser Licensing and Certification Board
Effective Date: September 24, 2008
Expiration Date: January 21, 2009
For further information, please call: (512) 465-3900

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.51

The Texas Real Estate Commission adopts on an emergency basis amendments to §535.51, concerning General Requirements by adding new subsections (f) - (h).

The amendments concern the time period for satisfaction of application requirements for persons who reside or whose principal place of business is in Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, and Washington Counties and who were significantly affected by Hurricane Ike.

The amendments outline the conditions under which the commission will extend the expiration date of the application for a period of four months in order to complete any examination or fingerprinting requirement. The provisions do not apply to any application that expired prior to September 7, 2008.

As a result of the proclamations by the Governor of the State of Texas dated September 7, and 12, 2008, declaring a state of emergency due to Hurricane Ike, the Texas Real Estate Commission has determined that the conditions outlined in §2001.034 of the Texas Government Code concerning emergency rulemaking have been satisfied to adopt on an emergency basis amendments to §535.51, concerning General Requirements for applicants for a salesperson or broker license residing or whose principal place of business is in the Texas counties detailed above and who were significantly affected by Hurricane Ike.

The amendments are adopted on an emergency basis under The Real Estate License Act (the Act), Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this emergency adoption are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the adopted amendments.

§535.51. General Requirements.

(a) - (e) (No change.)

(f) By the proclamation issued September 7, 2008, and amended September 12, 2008, by the Governor of the State of Texas and notwithstanding any provisions of the Act or Rules to the contrary, the commission may extend a license or registration application expiration date for an existing applicant who satisfies the following criteria:

(1) the applicant resides or has a primary place of business in Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, or Washington County and was significantly impacted by Hurricane Ike;

(2) as a result of the disaster, the applicant is unable to satisfy any examination requirement or provide fingerprints to the Department of Public Safety within six months from the date the application is filed; and

(3) the existing application expires on or before February 28, 2009.

(g) If an applicant meets the criteria in subsection (f) of this section, the expiration date of the application is extended for an additional four month period and the applicant must complete all requirements within such four month period or the application shall be considered void and subject to no further evaluation or processing.

(h) Subsections (f) and (g) of this section do not apply to an application that expired prior to September 7, 2008.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 24, 2008.

TRD-200805148

Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Effective Date: September 24, 2008
Expiration Date: January 21, 2009
For further information, please call: (512) 465-3900

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SUBCHAPTER I. LICENSES

22 TAC §535.95

The Texas Real Estate Commission adopts on an emergency basis amendments to §535.95, concerning Miscellaneous Provisions Concerning License or Registration Renewals, Including Fingerprinting by adding new subsections (f) - (i).

The amendments concern satisfaction of Salesperson Annual Education (SAE), Mandatory Continuing Education, (MCE), fingerprinting requirements, payment of fees, and other renewal requirements for licensees who reside or whose principal place of business is in Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, and Washington Counties and who were significantly affected by Hurricane Ike.

The amendments outline the conditions under which the Commission will defer renewal of licenses for salespersons, broker, and easement and right-of-way agents who are unable to timely renew and otherwise meet all renewal requirements for an active license because of Hurricane Ike. The amendments permit affected real estate salespersons and brokers to take up to four months to complete all of the renewal requirements under Chapter 1101 of the Texas Occupations Code. The extension option will be available only for licensees who satisfy the criteria in the rule and whose licenses expire between September 30, 2008 and February 28, 2009. For licenses that expire after that period, the license renewal is subject to the Act and existing Rules. If a licensee fails to pay the renewal fees within the four month period, the license will expire at the end of the four month period. If a licensee fails to get fingerprinted or complete continuing education, the license will go inactive at the end of the four month period until such time that the licensee meets all renewal requirements.

As a result of the proclamations by the Governor of the State of Texas dated September 7, and 12, 2008, declaring a state of emergency due to Hurricane Ike, the Texas Real Estate Commission has determined that the conditions outlined in §2001.034 of the Texas Government Code concerning emergency rulemaking have been satisfied to adopt on an emergency basis amendments to §535.95, concerning licensing renewals requirements for licensees residing in or whose principal place of business is in the Texas counties detailed above who were significantly affected by Hurricane Ike.

The amendments are adopted on an emergency basis under The Real Estate License Act (the Act), Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this emergency adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

§535.95. Miscellaneous Provisions Concerning License or Registration Renewals, Including Fingerprinting.

(a) - (e) (No change.)

(f) Renewal requirements for a license or registration significantly impacted by Hurricane Ike. By the proclamation issued September 7, 2008, and amended September 12, 2008, by the Governor of the State of Texas and notwithstanding any provisions of the Act or Rules to the contrary, the commission may defer the renewal requirements for a current license or registration and maintain the license or registration on active status for a licensee or registrant (licensee) who satisfies the following criteria:

(1) the licensee resides or has a primary place of business in Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, or Washington County and was significantly impacted by Hurricane Ike;

(2) as a result of the disaster, the licensee is unable to perform one or more of the following renewal requirements before the original expiration date of the current license:

(A) complete all applicable annual or continuing education requirements;

(B) provide fingerprints to the Texas Department of Public Safety; or

(C) pay renewal fees; and

(3) the original expiration date of the current license is between September 30, 2008 and February 28, 2009.

(g) If a licensee subject to subsection (f) of this section is unable to perform any renewal requirement prior to the original expiration date of the current license, the license is extended for an additional four month period and the licensee must complete all renewal requirements within such four month period in order to maintain the license on active status.

(h) If a licensee subject to subsection (f) of this section fails to file the required renewal application and pay the required fee on or before the end of the four month period, the license will expire at the end of the four month period. If, on or before the end of the four month period a licensee has filed the required renewal application and paid the required renewal fee but has failed to complete all applicable annual or continuing education requirements or to provide required fingerprints to the Texas Department of Public Safety, the license will revert to inactive status at the end of the four month period until such time that the licensee completes all renewal requirements.

(i) A license subject to Mandatory Continuing Education (MCE) requirements that is renewed under subsection (f) of this section expires 24 months after the original expiration date of the current license. A license subject to Salesperson Annual Education (SAE) requirements that is renewed under subsection (f) of this section expires 12 months after the original expiration date of the current license. SAE or MCE courses completed after the original expiration date of the current license under subsection (g) of this section may not be applied to meet MCE requirements for the following renewal of the license.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 24, 2008.

TRD-200805132
Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Effective Date: September 24, 2008
Expiration Date: January 21, 2009
For further information, please call: (512) 465-3900

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.208, §535.216

The Texas Real Estate Commission adopts on an emergency basis amendments to §535.208, concerning Application for a License by adding new subsections (g) and (h) and §535.216, concerning Renewal of License or Registration by adding new subsections (g) - (j).

The amendments concern satisfaction of renewal and application requirements for home inspector licensees and applicants who reside or whose principal place of business is in Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, and Washington Counties and who were significantly affected by Hurricane Ike.

The amendments outline the conditions under which the commission will defer renewal of home inspector licenses for licensees who are unable to timely renew and otherwise meet all renewal requirements for an active license because of Hurricane Ike. The amendments permit affected home inspectors to take up to four months to complete all of the renewal requirements under Chapter 1102 of the Texas Occupations Code. The extension option will be available only for licensees who satisfy the criteria in the rule and whose licenses expire between September 30, 2008 and February 28, 2009. For licenses that expire after that date, the license renewal is subject to the Act and existing Rules. If a licensee fails to pay the renewal fees within the four month period, the license will expire at the end of the four month period. If a licensee fails to complete continuing education or provide proof of liability insurance coverage, the license will go inactive at the end of the four month period until such time that the licensee meets all renewal requirements.

For persons with pending applications for a home inspector license who are impacted by Hurricane Ike and live or work in the counties described above, the emergency amendments extend the expiration date of the application for a period of four months in order to complete any examination requirement. The provisions do not apply to any application that expired prior to September 7, 2008.

As a result of the proclamations by the Governor of the State of Texas dated September 7, and 12, 2008, declaring a state of emergency due to Hurricane Ike, the Texas Real Estate Commis-

sion has determined that the conditions outlined in §2001.034 of the Texas Government Code concerning emergency rulemaking have been satisfied to adopt on an emergency basis amendments to §535.208, concerning Application for a License and §535.216, concerning Renewal of License or Registration for licensees and applicants residing in or whose principal place of business is in the Texas counties detailed above who were significantly affected by Hurricane Ike.

The amendments are adopted on an emergency basis under The Real Estate License Act (the Act), Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this emergency adoption are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the adopted amendments.

§535.208. Application for a License.

(a) - (f) (No change.)

(g) By the proclamation issued September 7, 2008, and amended September 12, 2008, by the Governor of the State of Texas and notwithstanding any provisions of the Act or Rules to the contrary, the commission may extend a license or registration application expiration date for an existing applicant who satisfies the following criteria:

(1) the applicant resides or has a primary place of business in Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, or Washington County and was significantly impacted by Hurricane Ike;

(2) as a result of the disaster, the applicant is unable to satisfy the examination requirement within six months from the date the application is filed; and

(3) the existing application expires on or before February 28, 2009.

(h) If an applicant meets the criteria in subsection (g) of this section, the expiration date of the application is extended for an additional four month period and the applicant must satisfy the examination requirement within such four month period or the application shall be considered void and subject to no further evaluation or processing.

(i) Subsections (g) and (h) of this section do not apply to an application that expired prior to September 7, 2008.

§535.216. Renewal of License or Registration.

(a) - (f) (No change.)

(g) Renewal requirements for an apprentice, real estate, or professional home inspector significantly impacted by Hurricane Ike. By the proclamation issued September 7, 2008, and amended September 12, 2008, by the Governor of the State of Texas and notwithstanding any provisions of the Act or Rules to the contrary, the commission may defer the renewal requirements for a current license and maintain the license on active status for a licensee who satisfies the following criteria:

(1) the licensee resides or has a primary place of business in Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, or Washington County and was significantly impacted by Hurricane Ike;

(2) as a result of the disaster, the licensee is unable to perform one or more of the following renewal requirements before the original expiration date of the current license:

(A) complete all applicable continuing education requirements;

(B) provide proof of professional liability insurance, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102, Texas Occupations Code; or

(C) pay renewal fees; and

(3) the original expiration date of the current license is between September 30, 2008 and February 28, 2009.

(h) If a licensee subject to subsection (g) of this section is unable to perform any renewal requirement prior to the original expiration date of the current license, the license is extended for an additional four month period and the licensee must complete all requirements within such four month period.

(i) If a licensee subject to subsection (f) of this section fails to file the required renewal application and pay the required fee on or before the end of the four month period, the license will expire at the end of the four month period. If, on or before the end of the four month period a licensee has filed the required renewal application and paid the required renewal fee but has failed to complete all continuing education requirements or to provide proof of required liability insurance, the license will revert to inactive status at the end of the four month period until such time that the licensee completes all renewal requirements.

(j) A license that is renewed under subsection (g) of this section expires 24 months after the original expiration date of the current license. Continuing education courses completed after the original expiration date of the current license under this provision may not be applied to meet continuing education requirements for the following renewal of the license.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Effective Date: September 24, 2008
Expiration Date: January 21, 2009
For further information, please call: (512) 465-3900

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 8. PIPELINE SAFETY REGULATIONS

The Commission proposes amendments, in Subchapter A, to §8.1 and §8.5, relating to General Applicability and Standards; and Definitions; in Subchapter B, amendments to §8.101 and §8.115, and new §8.135, relating to Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines; New Construction Commencement Report; and Penalty Guidelines for Pipeline Safety Violations; in Subchapter C, amendments to §§8.203, 8.205, 8.210, 8.215, 8.225, 8.230, and 8.235, relating to Supplemental Regulations; Written Procedure for Handling Natural Gas Leak Complaints; Reports; Odorization of Gas; Plastic Pipe Requirements; School Piping Testing; and Natural Gas Pipelines Public Education and Liaison; and, in Subchapter D, amendments to §§8.301, 8.305, 8.310, and 8.315, relating to Required Records and Reporting; Corrosion Control Requirements; Hazardous Liquids and Carbon Dioxide Pipelines Public Education and Liaison; and Hazardous Liquids and Carbon Dioxide Pipelines or Pipeline Facilities Located Within 1,000 Feet of a Public School Building or Facility.

On October 9, 2007, the Commission approved the first publication of most of these rule proposals for comment. The notice was published in the October 26, 2007, issue of the *Texas Register* for a 30-day comment period. By the close of the comment period on November 26, 2007, the Commission had received substantive comments on many of the proposed changes. Comments were received from eight different parties, including six from individual companies and two from associations. Because the Commission agreed with some of the comments but could not incorporate them into the rules without another round of publication for comment, the Commission withdrew the proposal on December 18, 2007. Commission Safety Division staff conducted a public rulemaking workshop on January 8, 2008, to discuss the rule proposal and comments. The workshop proceedings can be found on the Commission's web page at www.rrc.state.tx.us/meetings-seminars/pubm.html and clicking on the Webcasts link or at the archived Commission meetings link at www.texasadmin.com/cgi-bin/txrail.cgi. The comments received during the November 2007 comment period and during the January 2008 workshop have been reviewed and considered in this new proposal.

The Commission proposes the amendments and new rule to update the adoption by reference of federal pipeline safety provisions and citations, to provide guidelines for filing required reports with the Commission, to address new risk management initiatives for the Commission's pipeline safety evaluation program, to address the regulation of pipelines and some production facilities in populated areas, and to remove outdated or duplicative rule requirements.

In §8.1(a)(1), the Commission proposes to remove the word "natural" in subparagraph (A) and to add new subparagraph (B) to address onshore pipeline and gathering and production facilities in designated Class 2, Class 3, and Class 4 locations. The Commission received comments concerning the proposed removal of the word "natural" in subparagraph (A), which originally was proposed to clarify that LPG distribution systems are also regulated under the safety rules. The new proposal would add LPG distribution systems as a separate type of facility as was done with master meter operators in that same subparagraph.

In §8.1(b), the Commission proposes to change the effective date from July 1, 2005, to August 25, 2008, to reflect a new date for the adoption by reference of federal pipeline safety statutes, and proposes new wording in paragraphs (3) and (4) to add references to 49 CFR Part 40 and to another Commission rule, 16 TAC §3.70, relating to Pipeline Permits Required.

The Commission proposes the amendments in §8.1(b) to update the minimum safety standards and to adopt by reference the United States Department of Transportation's (USDOT) pipeline safety standards found in 49 U.S.C. §§60101, et seq.; 49 Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards; 49 U.S.C. §§60101, et seq.; 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline; and 49 CFR Part 199, Drug and Alcohol Testing. The current rule adopts the federal pipeline safety standards as of July 1, 2005; the proposed amendment will show this date as August 25, 2008. The federal safety rule amendments that will be captured are summarized in the following paragraphs.

USDOT's Amendment No. 192-101(102) and 195-85(86), published at 70 Federal Register (FR) 61571, addressed current regulations governing integrity management of gas transmission lines where an operator using direct assessment to evaluate corrosion risks must carry out the direct assessment according to PHMSA standards. In response to a statutory directive, the final rule prescribes similar standards operators must meet when they use direct assessment on certain other onshore gas, hazardous liquid, and carbon dioxide pipelines. PHMSA stated that broader application of direct assessment standards will enhance public confidence in the use of direct assessment to assure pipeline safety. The final rule took effect November 25, 2005.

USDOT's Amendment No. 192-102, published at 71 FR 13289, adopted a consensus standard to distinguish onshore gathering lines from other gas pipelines and from production operations. In addition, it established safety rules for certain onshore gathering lines in rural areas and revised current rules for certain onshore gathering lines in nonrural areas. Operators will use a new risk-based approach to determine which onshore gathering lines are subject to PHMSA's gas pipeline safety rules and which of these rules the lines must meet. PHMSA intended the action to reduce disagreements over classifications of onshore gathering lines, increase public confidence in the safety of onshore gathering lines, and provide safety rules consistent with the risks of onshore gathering lines. The final rule took effect April 14, 2006.

Amendment Nos. 192-103, 193-19, and 195-86, published at 71 FR 33402, updated the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards to enable pipeline operators to utilize current technology, materials, and practices. The final rule took effect July 10, 2006.

Docket OST-2007-26828, published at 72 FR 1298, was an interim final rule regarding the National Highway Transportation Safety Administration's (NHTSA's) recently approved new breath tube alcohol screening device which will qualify for use in DOT agency-regulated testing once it appears on NHTSA's conforming products list. The interim final rule will provide procedure for use of the new device and remove procedures for a previously approved breath tube alcohol screening device which is no longer being manufactured. The interim final rule took effect January 11, 2007.

Amendment Nos. 192-103 and 195-86, published at 72 FR 4655, addressed PHMSA's amendment of a final rule published in the Federal Register on June 9, 2006, which updated the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards to enable pipeline operators to utilize current technology, materials, and practices. The final rule took effect March 5, 2007.

Docket No. PHMSA-2005-22642, published at 72 FR 20055, concerned a final rule requiring operators to use design and construction features in new and replaced gas transmission pipelines to reduce the risk of internal corrosion. The design and construction features required by the rule will reduce the risk of internal corrosion and related pipeline failures by reducing the potential for accumulation of liquids and facilitating operation and maintenance practices that address internal corrosion. The final rule took effect May 23, 2007.

Amendment Nos. 192-104 and 195-87, published at 72 FR 39012, modified the integrity management regulations for hazardous liquid and natural gas transmission pipelines. The modifications included adding an eight-month window to the period for reassessing hazardous liquid pipelines; modifying notification requirements for operators of hazardous liquid and natural gas pipelines; repealing a requirement for gas operators to notify local authorities; and allowing alternatives in calculating pressure reduction when making an immediate repair on a hazardous liquid pipeline. The action was intended to improve pipeline safety by clarifying the integrity management regulations and providing operators with increased flexibility in implementing their integrity management programs. The final rule was effective August 16, 2007.

Federal Register Docket No. 07-55511, published at 72 FR 54600, contained a correction in the heading in 49 CFR Part 40.209. In PHMSA Docket 2003-15852, published at 72 FR 70808, the rules for public awareness were relaxed for master meter operators and operators of small LPG distribution systems, effective January 14, 2008. These operators typically manage property and incidentally provide gas service to customers located on the property. The change provided a less burdensome means for the operators to comply with the public education and awareness programs.

Docket No. PHMSA-2007-0033, published at 73 FR 16562, conformed PHMSA's administrative procedures with the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act) by establishing the procedures PHMSA will follow in issuing safety orders and handling requests for special permits, including emergency special permits. The interim final rule also notified operators about electronic docket information availability; updated addresses, telephone numbers, and routing symbols; and clarified the time period for processing requests for written interpretations of the regulations. The interim final rule did not impose any new operating, maintenance, or other substantive requirements on pipeline owners or operators. The interim final rule was effective April 28, 2008.

Docket OST-2008-0184, published at 73 FR 33735, amended the drug and alcohol testing procedures to authorize employers to disclose to State commercial driver licensing (CDL) authorities the drug and alcohol violations of employees who hold CDLs and operate commercial motor vehicles (CMVs), when a State law requires such reporting. The rule also permitted third-party administrators (TPAs) to provide the same information to State CDL licensing authorities where State law requires the TPAs to do so for owner-operator CMV drivers with CDLs. The interim final rule was effective June 13, 2008.

Docket ID PHMSA-RSPA-2003-15875, published a 73 FR 31634, amended the pipeline safety regulations to extend added protection to certain environmentally sensitive areas that could be damaged by failure of a rural onshore hazardous liquid gathering line or low-stress pipeline. Building on PHMSA's existing regulatory framework, the rule was intended to protect designated "unusually sensitive areas" (USAs), which are locations requiring extra protection because of the presence of sole-source drinking water, endangered species, or other ecological resources. The rule defined "regulated rural onshore hazardous liquid gathering lines" and required operators of these lines to comply with safety requirements that address the most common threats to the integrity of these pipelines: corrosion and third-party damage. In accordance with the PIPES Act of 2006, the rule also significantly narrowed the regulatory exception for rural onshore low-stress hazardous liquid pipelines by extending all existing safety regulations, including integrity management requirements, to large-diameter low-stress pipelines within a defined "buffer" area around a USA. The final rule required operators of these, and all other low-stress pipelines, to comply with annual reporting requirements, furnishing data needed for further rulemaking required by the PIPES Act. The final rule was effective July 3, 2008.

Docket No. OST-2003-15245, published at 73 FR 35961, amends certain provisions of USDOT's drug and alcohol testing procedures to change instructions to collectors, laboratories, medical review officers, and employers regarding adulterated, substituted, diluted, and invalid urine specimen results. These changes are intended to create consistency with specimen

validity requirements established by the U.S. Department of Health and Human Services, and to clarify and integrate some measures taken in two interim final rules. The final rule makes specimen validity testing mandatory within the regulated transportation industries. The final rule was effective August 25, 2008.

The Commission proposes new §8.1(g) relating to compliance deadlines to establish the time by which operators must comply with pipeline safety requirements. One purpose of the new subsection is to clarify that operators of a pipeline and/or pipeline facility that is new, replaced, relocated, or otherwise changed must ensure compliance with the applicable requirements of this section at the time the pipeline and/or pipeline facility goes into service. However, the main purpose of the new subsection, as proposed in paragraph (2), is to assist those operators whose pipeline or pipeline facilities have become newly subject to regulation as a result of the changed definition in 49 CFR Part 192 by stating clearly the deadline by which their facilities must be in compliance with the various requirements of 49 CFR Part 192. An operator whose pipeline and/or pipeline facility was not previously regulated but has become subject to regulation pursuant to the changed definition in 49 CFR Part 192 and §8.1(a)(1)(B) must comply with the applicable requirements no later than the stated time period, all of which run from the effective date of the subsection. The different time periods are specified to allow operators enough time to comply with the new requirements, based on the type of changes they would need to make to ensure compliance. Upon adoption of this rule, the Commission will state the exact dates for compliance, as calculated based on the effective date of the adoption.

Proposed amendments in §8.5 add a reference to 49 CFR Part 40, clarify the definitions of "master metered system" and "pressure test" in paragraphs (18) and (24), respectively, and add a reference to onshore pipeline, gathering, and production facilities to the definition of "transportation of gas" in paragraph (28). To address the concerns raised during the workshop regarding the definition of the gathering and regulated production facilities, the Commission proposes a revised definition of the term "transportation of gas" which includes a reference to the definition of "first point of measurement" that is found in 49 CFR Part 192.

In §8.101(b), the Commission proposes to remove the word "gathering" from the description of intrastate transmission lines and from the title of Table 1 in subsection (b)(2).

The Commission proposes new wording in §8.115 to add a reference to Form PS-48 and to describe requirements for new construction reports.

The Commission proposes new §8.135 to move the penalty guidelines for pipeline safety violations from Subchapter C, which applies to requirements for natural gas pipelines only, to Subchapter B, so that the guidelines will apply to all pipelines. The text of the rule is the same as §8.245, which is proposed for repeal in a concurrent rulemaking, but Tables 1 and 5 have been amended to include references to the rules pertaining to hazardous liquids and carbon dioxide pipelines and pipeline facilities. These changes will mean that penalty provisions for violations of the federal and Commission rules for all pipelines and specific provisions for operator qualification and integrity management for both natural gas and liquids pipelines will be included in the rule.

In §8.203, the Commission proposes to update references to federal statutes that have been changed and with which operators already must comply.

The Commission proposes clarifying wording in §8.205 to state that supervisory review of leak complaints must be completed and documented by 10:00 a.m. each day for calls received by midnight on the previous day.

In §8.210(a)(1), the Commission proposes to add a reference to 49 CFR Part 191.3 and to delete some specific wording in subparagraphs (A) - (E) and paragraph (2) that is now covered by Part 191.3. In paragraph (3), proposed to be renumbered to paragraph (2), the Commission proposes to add new subparagraphs (F) and (G) to require including the telephone number of the operator's on-site person, and estimated property damage, including the cost of gas lost, to the operator, others, or both. In subparagraph (H) (currently designated as (F)), the Commission proposes new wording to state that ignition, explosion, rerouting of traffic, evacuation of any building, and media interest are considered significant facts that must be reported. In paragraph (3) (currently designated as (4)), the Commission proposes to add a reference to 49 CFR Part 191 and to add new wording to describe Department of Transportation reports.

Section 8.210(b)(1) includes a proposed addition of the word "intrastate" for systems which must file pipeline safety annual reports, and the remainder of this paragraph is proposed to be reworded to conform to the Department of Transportation reporting requirements.

The Commission proposes new subsection (e) to require natural gas operators to submit on a semi-annual basis information regarding the number of repaired leaks on their pipeline systems as well as the number of leaks remaining unrepaired. Each operator will be required to submit a listing of repaired leaks on proposed new Form PS-95 that describes the leak and the method of repair. The Form PS-95 report will also require reporting of information for the leaks on the system yet to be repaired, organized by leak grade. This proposed new form incorporates the information required on the Plastic Pipe Failure Report, PS-80, and therefore the Commission also proposes to delete §8.225(a), as discussed below. The Form PS-95 reports will be submitted electronically into the Commission's Pipeline Safety Integrity system on June 30 and December 31 of each calendar year.

Step 1 on the online PS-95 Leak Report is to report the number of unrepaired leaks on the system by grade. Leak grades are defined in §8.207(b) - (d). Step 2 is to report leaks that have been repaired. The Form PS-95 uses drop-down menus for many of the data elements required to be reported. For each leak repaired during the reporting period, the operator must provide the address; operator's leak identification number; date reported; whether above or below ground; the location on the pipe (e.g., body of pipe, valve, joint, riser, tap, compression coupling, etc.); if on a joint, what type (e.g., threaded, bell and spigot, flange, etc.); if on a fitting, what type (e.g., saddle fitting, elbow, tee, split sleeve, meter swivel, etc.); if the type of fitting coupling was plastic or metal, the name of the manufacturer and the model; the facility type (main, service, or transmission); the grade (1, 2, or 3); the pipe size; the type of pipe (e.g., bare steel, coated steel, galvanized, copper, brass, PVC, etc.); the cause or causes of the leak (corrosion; excavation operator personnel/contractors excavating, other third party excavators, locator, or vehicle); natural forces (lightning, washout, ground movement, ice, or static electricity); other outside forces (vandalism, fire/explosion, or ex-

cessive strain); materials and welds (dent, gouge, factory defect, wrinkle bend, weld (steel) or fusion defect (plastic)); equipment (equipment malfunction, gasket/o-ring, or packing); operations (inadequate/failure to follow procedures; stripped threads; or backfill), or other group (not excavated or other); the leak repair method (e.g., clamp installed, split sleeve, replacement (component or pipe), greasing, doping/caulking, etc.); and the date of the repair.

The Commission will implement two electronic filing methods for new Form PS-95 Leak Report, an online system and an Electronic Document Interchange (EDI) filing procedure. An organization (i.e., a Form P-5 operator) must file a Security Administrator Designation (SAD) Form with the Commission as a requirement for filing online or using EDI. An account is created for the person designated on the SAD Form as the Security Administrator for the organization. This Security Administrator, in turn, can assign filing rights to the organization's employees that authorize them to file Commission forms electronically. Organizations that have existing SAD forms do not need to re-file; the existing Security Administrators will be able to assign Pipeline Integrity filing rights to the users within the RRC Online System.

Each file submitted to the Commission for EDI processing must have an Identifying Record as the first record in the file. The processing of this record includes the validation that the User ID is authorized to file electronically. An operator using spreadsheet software to compile data for the Form PS-95 will be able to export the file to a right curly bracket (}) delimited format for EDI submission. This application eliminates the requirement to submit a test file, but it will validate the format of each file submitted. Numeric columns must not contain any commas; e.g., use 1000000 for one million, not 1,000,000. Nor should columns contain currency formatting like "$" or "USD." Data entry is case sensitive. A file not meeting the formatting requirements will be rejected. Filers will be required to correct the formatting error and resubmit the file. Since this check will be performed each time a file is submitted, the necessity of submitting and receiving a certification of formatting is redundant and therefore eliminated. However, the Commission will provide EDI filers with the capability to test files prior to submitting them to validate their EDI file formats. For specific records not meeting the filing requirements, the filer will receive error/approval feedback on the screen in the form of a message. A file may be resubmitted once all errors are corrected.

In §8.215, the Commission proposes to amend subsection (b) to require use of commercially available odorization equipment, and to delete references to shop-made equipment. In subsection (c), the Commission proposes to require use of commercially available malodorants, and to change the reference in paragraph (3) from "1.0% or less by volume" to "one-fifth of the lower explosive limit." In subsection (d)(2), the Commission clarifies that malodorant tests must be done at intervals not exceeding 15 months, but at least once each calendar year; a similar change is proposed in subsection (e)(1) for malodorant concentration tests. Also, in paragraph (1), the Commission proposes to delete subparagraph (A), retain the text of subparagraph (B) in paragraph (1), and redesignate items (i) - (iv) as subparagraphs (A) - (E).

With the addition of the new section for leak reporting, the Commission intends to combine the requirements of §8.225(1) into new §8.210(e); therefore, subsection (a) of §8.225 is proposed to be deleted and the remaining subsections redesignated.

The Commission proposes clarifications in §8.230(c)(1) and (2); new paragraph (2)(A) is proposed to state that school facility pipe testing includes all gas piping from the outlet of the purchase meter to each inlet valve of each appliance. Current subparagraphs (A) - (C) are proposed to be redesignated as (B) - (D).

In §8.235(a), the Commission proposes clarifying wording to state that liaison activities must be conducted at intervals not exceeding 15 months, but at least once each calendar year, and in subsection (e), to add a specific date of January 15 of each even-numbered year for certain information to be filed.

The Commission proposes to clarify §8.301(a)(1)(A) with new items (vi), (vii), and (viii) that would require an operator to include the telephone numbers of the operator and the operator's on-site person, and to specify that ignition, explosion, rerouting of traffic, evacuation of any building, and media interest are considered significant facts that must be reported. In subparagraph (B), the Commission proposes clarifying wording concerning submission to the Commission of copies of any reports submitted to the Department of Transportation. In paragraph (2)(A) and (B), the Commission proposes to add the Commission's emergency telephone number and a clarifying statement regarding submission to the Commission of copies of Department of Transportation reports.

In subsection (b), the Commission proposes to add that each operator must file an annual report for its intrastate systems located in Texas in the same manner as required by 49 CFR Part 195, using forms supplied by the Department of Transportation. The Commission proposes new subsection (c) requiring submission to the Commission of safety-related condition reports as specified in 49 CFR 195. Current subsection (c) is proposed to be redesignated as subsection (d).

The Commission proposes to delete from §8.305 the requirement in paragraph (1) for atmospheric corrosion control, to redesignate the remaining paragraphs, and in redesignated paragraph (3) (currently paragraph (4)) to change the requirements for cathodic protection test stations. The Commission also proposes to delete subparagraphs (A) and (B) from the monitoring and inspection requirement in current paragraph (5), proposed to be renumbered as paragraph (4).

In §8.310(a), the Commission proposes to add wording that liaison activities must be conducted at intervals not exceeding 15 months, but at least once each calendar year.

Finally, in §8.315(c), the Commission proposes to clarify that pipeline owners and operators must file certain information on January 15 of each odd-numbered year.

Mary McDaniel, P.E., Director, Safety Division, has determined that for each of the first five years the proposed amendments and new rules will be in effect, there will be no fiscal implications for state government. There may be fiscal implications for those local governments that operate natural gas distribution systems, which would be similar to those for operators of similarly-sized investor-owned distribution systems. The proposals to remove some record-keeping requirements from the rules and to reduce the number of incident reports that must be telephonically reported to the Commission may reduce costs; however, there may be an increased cost of compliance for operators of natural gas distribution systems, both municipally-owned and investor-owned, for the proposal to require the semi-annual reporting of identified repaired and unrepaired leaks on those systems. Ms. McDaniel has determined that the costs will vary by operator depending on the data collection process currently used by each

natural gas operator and the extent to which, if any, each operator's data collection process would need to be modified to meet the requirements of the proposed amendments and new rules. For those operators that already track the data items, the associated cost of compliance will be the tabulation of those data. Other operators, however, may need to add data collection fields in order to provide the required information.

For a municipally-owned distribution system, Ms. McDaniel anticipates that the fiscal implications will be minimal. For example, one city included on its 2007 DOT annual report a total of seven leaks that were eliminated during 2006. The Commission's proposal would require the operator to report additional information about each of those leaks: the type of pipe, type of soil, leak repair method, and more detail on the cause of the leak. Most operators already use a modified version of the leak repair reporting form that the Commission proposes to adopt. For this municipally-owned system, the additional fiscal implications would arise from the operator compiling the additional information on system leaks and repairs and reporting it online. For this particular operator of a municipally-owned system, Ms. McDaniel estimates the additional cost of compliance to be no more than $100. Other operators of municipally-owned natural gas distribution systems may experience higher costs, depending on each operator's current data collection method and the number of leaks repaired and remaining unrepaired on the distribution system.

Ms. McDaniel has determined that for each year of the first five years that the amendments and new rules will be in effect, the primary public benefit will be accurate reference to federal pipeline safety standards enforced by the Commission and an increased level of safety for the pipeline systems by the identification of potential risk factors associated with pipeline leakage. In addition, the amendments and new rules are expected to provide enhanced public safety and increased awareness of safety requirements in the transportation of natural gas in populated areas by requiring compliance with safety rules for all pipelines located in these populated area.

Ms. McDaniel has also developed the following analysis of the probable economic cost to persons required to comply with the proposed amendments and new rules for each year of the first five years that they will be in effect, as well as the analysis required by Texas Government Code, §2006.002. That statute requires that, before adopting a rule that may have an adverse economic effect on small businesses, a state agency prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement must estimate the number of small businesses subject to the proposed rule, project the economic impact of the rule on small businesses, and describe alternative methods of achieving the purpose of the proposed rule. A regulatory flexibility analysis must include the agency's consideration of alternative methods of achieving the purpose of the proposed rule. The analysis must consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses. The state agency must include in the analysis several proposed methods of reducing the adverse impact of a proposed rule on a small business. The statute defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. A "micro-business" is a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has no more than 20 employees.

Ms. McDaniel has determined that there will be an increased cost of compliance for operators of some gas production operations and for operators of some gas distribution systems, both municipally-owned and investor-owned, for the proposed amendments and new rules. Commission records show that there are approximately 100 production type operators and 132 operators of gas distribution systems, of which 81 are municipally-owned and -operated natural gas distribution systems, 38 are investor-owned and -operated natural gas distribution systems, and the remaining 13 are investor-owned LP-gas distribution systems. Some of these entities are small businesses, and some of them may be micro-businesses or sole proprietorships. The Comptroller of Public Accounts shows a total of 144 businesses engaged in natural gas distribution, of which 119 are classified as small businesses under Texas Government Code, §2006.002. However, the Commission does not collect information--such as annual gross receipts and number of employees--that would allow the Commission to determine more specifically how many of these investor-owned entities are small businesses or micro-businesses. Therefore, the Commission has calculated the potential cost of compliance with the rule proposal based on hypothetical business entities using the following assumptions: the owner of a sole proprietorship is the only employee; a micro-business has five employees; a small business has 50 employees; and a large business has 1,000 employees.

The development of a data collection tool to provide the necessary information required in proposed new §8.210(e), is a one-time cost that all operators of gas distribution systems will incur. From the data collection point, the process for submitting data to the Commission will vary from company to company. In some instances, operators will file their data online by key entering the data for each leak repaired. Other companies, however, may submit data online by "uploading" data from their existing leak repair systems. Many of the data items required to be provided regarding leak repairs are already tracked by some operators; for them, creating the leak report forms may require only the tabulation of those existing data. Other operators may need to add data collection fields in order to provide the requested information, which would then be entered into the Commission's online system.

Ms. McDaniel estimates that the cost for an operator to create a leak repair program for its distribution system could range from as little as $500 to as much as $50,000. The lowest estimate is based on a system with a minimum number of leaks such that the operator could enter leak and leak repair data individually into the Commission's online system. The higher estimate is an approximate cost of developing a computer program for recording data that can then be extracted and uploaded into the Commission's system.

In addition, the cost to gather, record, and submit leak repair data will vary because some operators will create or modify existing leak repair data programs, while others will have to modify handwritten forms and individually enter data into the Commission's online database. For the purpose of this proposal, however, Ms. McDaniel assumes that recording leak and leak repair data into a company's records and reporting these data into the Commission's online system will take the same amount of time regardless of the size of the business entity, and that the cost per hour

for these tasks will also be the same. Using the Texas Workforce Commission's wage data, the Commission calculates the wage cost of a field technician to be $20.61 per hour and the cost of a data entry person to be $11.99 per hour.

Based on information from gas distribution system operators, the average time to record data on a leak repair form takes less than 30 minutes per repair. Ms. McDaniel estimates that reporting the additional data may take an additional 10 minutes per leak reported, and there will be additional time needed to compile the information. Based on testing of the Commission's online system, the time required to enter the data into the online system is also 30 minutes per leak. Conservatively, then, the estimated time to complete the recording and reporting requirements under the rule will be approximately one hour per leak repair (one-half hour for each of the two types of employees), at a cost of $16.30 an hour, calculated as follows: ($20.61 divided by 2) plus ($11.99 divided by 2) equals $16.30. Based on data from operator annual reports, the number of leaks repaired in one year ranges from zero to well over 6,000. Ms. McDaniel also assumes, generally, that an individual, small business, or micro-business operator will have a smaller system, and therefore fewer leak repairs per reporting period, than would a large business operator. Based on that assumption, it follows that the total dollar amount of the cost of compliance will be lower for an individual, small business, or micro-business operator, but higher on a per-employee basis, than for a large business operator.

The following table shows a comparison of the cost per employee under various assumptions regarding compliance with the proposed new leak repair reporting requirements under §8.210(e):

Figure 1: 16 TAC Chapter 8--Preamble

Proposed new §8.1(g), will apply to some operators of gas flow or production type pipelines not previously regulated under Commission rules, but will affect only those portions of their pipelines that fall within the designated Type A or Type B categories. In preparing this rulemaking proposal, the Commission considered changing the definition of "transportation of gas" to incorporate the Commission's regulation of all natural gas pipelines as natural gas gathering, transmission, and/or distribution. The Commission estimates that there are fewer than 100 gas production operators, but this is only an estimate because not all of the production type operators are regulated under Commission rules. Some production operators may already be operating the systems in compliance with the safety regulations, and for them, the additional costs would be limited to record keeping to demonstrate that compliance. For production type operators, the cost of compliance could range from zero for those operators already operating as regulated systems to over $100,000 if an operator has not applied any of the safety regulations to the pipeline system. The amendment to the federal pipeline safety regulations that revised the definition of "gathering line" also exempted some lines that were currently under the Commission's jurisdiction as regulated gathering. Therefore, based on this application of the rule, the costs to comply with the new rule would apply to only a small subset of operators.

For the operators of production type pipelines required to comply with the rules, there will be an initial cost for developing manuals and records to document compliance with Commission rules; this activity will require compliance personnel. Ms. McDaniel has determined that the initial cost of compliance for both small and large operators would be the same, because the initial cost does not vary with the amount of pipeline that is regulated; these are general pipeline requirements that apply to both large and small operators. Ms. McDaniel estimates that most operators may require one month to create the manuals necessary for compliance, and has estimated this cost at $9,600. In addition, there will be annual costs for monitoring the facilities for compliance with the regulations, and these costs of complying with proposed new §8.1(g) will vary by operator depending on the population densities surrounding the pipeline and the level of compliance required under the regulation. For the purposes of this analysis, the following tables demonstrate the associated costs under two different scenarios: one in which an operator has some pipelines under regulatory oversight and the start-up costs would not be included, and the other showing the costs associated with a total pipeline safety program start-up.

Figure 2: 16 TAC Chapter 8--Preamble

The Commission anticipates that there will be no additional cost to individuals, small businesses, or micro-businesses of complying with the proposed amendments to §8.1, which simply change the date as of which the Railroad Commission has adopted by reference the federal pipeline safety rules. Texas pipeline operators are already required to comply with the federal rules. Under 49 U.S.C. §§60101, et seq., the Railroad Commission is authorized to enforce pipeline safety laws so long as the state's scheme of regulation is as strict as or stricter than the federal system. In order to be considered "as strict as or stricter than" the federal scheme of regulation, the state must adopt every federal rule; there are no exceptions for rules of limited application. Therefore, even though the rules already apply in Texas, the Railroad Commission must also adopt the rules for its own system. Finally, the Commission anticipates that there will be no additional costs to individuals, small businesses, or micro-businesses of complying with proposed new §8.135, which applies to pipeline operators against whom enforcement actions are brought for violations of pipeline safety rules, and is a summary and explanation of current statutory provisions and Commission practice with respect to requesting, recommending, and determining penalty amounts for pipeline safety violations.

In preparing this rulemaking proposal, the Commission considered whether there were any alternative methods for achieving the purpose of this proposal. The Commission could have proposed no changes in the pipeline safety regulations and continued having staff strongly encourage operators to report data about leaks and leak repairs on a voluntary basis. However, the Commission has determined that voluntary, piecemeal reporting of leak data produces inconsistent and unpredictable information about natural gas and LP-gas distribution system integrity, and therefore is inadequate to ensure the safety and welfare of gas distribution system customers and others. The Commission has concluded that requiring all gas distribution system operators to meet consistent minimum standards for recording and reporting leak data is essential to the goal of ensuring the health, safety, and environmental and economic welfare of the State. Further, the proposed changes in the pipeline safety regulations will maintain Commission safety jurisdiction over all pipelines located in populated area regardless of their purpose (production, gathering, or distribution). The Commission has concluded that requiring all operators to meet consistent minimum standards is essential to the goal of ensuring the health, safety, and environmental and economic welfare of the State. Minimizing any adverse impacts on small businesses is inconsistent with this goal. Safety standards for gas distribution systems, which are located in the most densely populated areas of the State, should not be made any less stringent merely because the owner or operator

of the system is an individual, a small business, or a micro-business.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until 5:00 p.m. on Monday, November 10, 2008, which is 31 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons over two additional weeks to review, analyze, draft, and submit comments. Comments should refer to GUD Docket No. 9757. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. McDaniel at (512) 463-7166. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

16 TAC §8.1, §8.5

The Commission proposes the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §81.0531, which requires the Commission to adopt by rule guidelines to be used in determining the amount of the penalty for a violation of a provision of Title 3 of the Texas Natural Resources Code, or a rule, order, license, permit, or certificate that relates to pipeline safety; Texas Natural Resources Code, §§117.001 - 117.102, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 United States Code Annotated, §§60101, et seq.; and Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.; §§121.251 and 121.252, which authorize the Commission to regulate the use of malodorants in natural gas; and §§121.5005 - 121.507, which give the Commission authority to regulate the testing of natural gas piping systems in school facilities.

Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code, §§121.201 - 121.211; 121.251, 121.252; and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, et seq., are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code, §§121.201 - 121.211; 121.251 and 121.252; and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas on September 23, 2008.

§8.1. General Applicability and Standards.

(a) Applicability.

(1) The rules in this chapter establish minimum standards of accepted good practice and apply to:

(A) all gas pipeline facilities and facilities used in the intrastate transportation of [~~natural~~] gas, including LPG distribution systems and master metered systems, as provided in 49 United States Code (U.S.C.) §60101, et seq.; and Texas Utilities Code, §§121.001 - 121.507;

(B) onshore pipeline and gathering and production facilities, beginning after the first point of measurement and ending as defined by 49 CFR Part 192 as the beginning of an onshore gathering line. The gathering and production beyond this first point of measurement shall be subject to 49 CFR Part 192.8 and shall be subject to the rules as defined as Type A or Type B gathering lines as those Class 2, 3, or 4 areas as defined by 49 CFR Part 192.5;

(C) [~~(B)~~] the intrastate pipeline transportation of hazardous liquids or carbon dioxide and all intrastate pipeline facilities as provided in 49 U.S.C. §60101, et seq.; and Texas Natural Resources Code, [~~§~~]§117.011 and §117.012; and

(D) [~~(C)~~] all pipeline facilities originating in Texas waters (three marine leagues and all bay areas). These pipeline facilities include those production and flow lines originating at the well.

(2) (No change.)

(b) Minimum safety standards. The Commission adopts by reference the following provisions, as modified in this chapter, effective August 25, 2008 [~~July 1, 2005~~].

(1) Natural gas pipelines, including LPG distribution systems and master metered systems, shall be designed, constructed, maintained, and operated in accordance with 49 U.S.C. §60101, et seq.; 49 Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; and 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards.

(2) (No change.)

(3) All operators of pipelines and/or pipeline facilities shall comply with 49 CFR Part 199, Drug and Alcohol Testing , and 49 CFR Part 40, Procedures for Transportation Workplace Drug & Alcohol Testing Programs.

(4) All operators of pipelines and/or pipeline facilities, other than master metered systems and distribution systems, shall comply with §3.70 of this title (relating to Pipeline Permits Required).

(c) - (f) (No change.)

(g) Compliance deadlines. Operators shall comply with the applicable requirements of this section according to the following guidelines.

(1) Each operator of a pipeline and/or pipeline facility that is new, replaced, relocated, or otherwise changed shall comply with the applicable requirements of this section at the time the pipeline and/or pipeline facility goes into service.

(2) An operator whose pipeline and/or pipeline facility was not previously regulated but has become subject to regulation pursuant to the changed definition in 49 CFR Part 192 and subsection (a)(1)(B) of this section shall comply with the applicable requirements of this section no later than the stated time periods from the effective date of this section:

(A) for cathodic protection (49 CFR Part 192), three years;

(B) for damage prevention (49 CFR 192.614), 18 months;

(C) to establish an MAOP (49 CFR 192.619), 12 months;

(D) for line markers (49 CFR 192.707), two years;

(E) for public education and liaison (49 CFR 192.616), two years; and

(F) for other provisions applicable to Type A gathering lines (49 CFR 192.8(c)), two years.

§8.5. Definitions.

In addition to the definitions given in 49 CFR Parts 40, 191, 192, 193, 195, and 199, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (17) (No change.)

(18) Master metered system--A pipeline system (other than one designated as a local distribution system) for distributing natural gas within but not limited to a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means such as rents.

(19) - (23) (No change.)

(24) Pressure test--Those techniques and methodologies prescribed for leak-test and strength-test requirements for pipelines. For natural gas pipelines, including LPG distribution systems and master metered systems, the requirements are found in 49 Code of Federal Regulations (CFR) Part 192, and specifically include 49 CFR 192.505, 192.507, 192.515, and 192.517. For hazardous liquids pipelines, the requirements are found in 49 CFR Part 195, and specifically include 49 CFR 195.305, 195.306, 195.308, and 195.310.

(25) - (27) (No change.)

(28) Transportation of gas--The gathering, transmission, or distribution of gas by pipeline or its storage within the State of Texas. For purposes of safety regulation, the term shall include onshore pipeline and production facilities, beginning after the first point of measurement and ending as defined by 49 CFR Part 192 as the beginning of an onshore gathering line [~~not include the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, a community development, or any similar populated area which the Secretary of Transportation may define as a nonrural area~~].

(29) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2008.

TRD-200805122
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 475-1295

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SUBCHAPTER B. REQUIREMENTS FOR ALL PIPELINES

16 TAC §§8.101, 8.115, 8.135

The Commission proposes the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §81.0531, which requires the Commission to adopt by rule guidelines to be used in determining the amount of the penalty for a violation of a provision of Title 3 of the Texas Natural Resources Code, or a rule, order, license, permit, or certificate that relates to pipeline safety; Texas Natural Resources Code, §§117.001 - 117.102, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 United States Code Annotated, §§60101, et seq.; and Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.; §121.251 and §121.252, which authorize the Commission to regulate the use of malodorants in natural gas; and §§121.5005 - 121.507, which give the Commission authority to regulate the testing of natural gas piping systems in school facilities.

Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code, §§121.201 - 121.211; 121.251, 121.252; and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, et seq., are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code,

§§121.201 - 121.211; 121.251 and 121.252; and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas on September 23, 2008.

§8.101. Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines.

(a) (No change.)

(b) By February 1, 2002, operators of intrastate transmission [~~and gathering~~] lines subject to the requirements of 49 CFR Part 192 or 49 CFR Part 195 shall have designated to the Commission on a system-by-system or segment within each system basis whether the pipeline operator has chosen to use the risk-based analysis pursuant to paragraph (1) of this subsection or the prescriptive plan authorized by paragraph (2) of this subsection. Hazardous liquid pipeline operators using the risk-based plan shall complete at least 50% of the initial assessments by January 1, 2006, and the remainder by January 1, 2011; operators using the prescriptive plan shall complete the initial integrity testing by January 1, 2006, or January 1, 2011, pursuant to the requirements of paragraph (2) of this subsection. Natural gas pipeline operators using the risk-based plan shall complete at least 50% of the initial assessments by December 17, 2007, and the remainder by December 17, 2012; operators using the prescriptive plan shall complete the initial integrity testing by December 17, 2007, or December 17, 2012, pursuant to the requirements of paragraph (2) of this subsection.

(1) (No change.)

(2) Operators electing not to use the risk-based plan in paragraph (1) of this subsection shall conduct a pressure test or an in-line inspection and take remedial action in accordance with the following schedule:
Figure 1: 16 TAC §8.101(b)(2)
Figure 2: 16 TAC §8.101(b)(2) (No change.)

(c) - (f) (No change.)

§8.115. New Construction Commencement Report.

Except as set forth below, at least 30 days prior to commencement of construction of any installation totaling one mile or more of pipe, each operator shall file with the Commission a report stating the proposed originating and terminating points for the pipeline, counties to be traversed, size and type of pipe to be used, type of service, design pressure, and length of the proposed line on Form PS-48. Each operator shall file a new construction report for the initial construction of a new liquefied petroleum gas distribution system. Each operator of a sour gas pipeline and/or pipeline facilities, as defined in §3.106(b) of this title (relating to Sour Gas Pipeline Facility Construction Permit), shall file a new construction report and Form PS-79, Application for a Permit to Construct a Sour Gas Pipeline Facility. New construction on natural gas distribution or master meter system of less than five miles is exempted [~~excepted~~] from this reporting requirement.

§8.135. Penalty Guidelines for Pipeline Safety Violations.

(a) Only guidelines. This section complies with the requirements of Texas Natural Resources Code, §81.0531(d), and Texas Utilities Code, §121.206(d). The penalty amounts contained in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Title 3 of the Texas Natural Resources Code relating to pipeline safety, or of rules, orders or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201, or Subchapter I (§§121.451 - 121.454), or a safety standard or rule relating to the transportation of gas and gas pipeline facilities adopted under those provisions.

(b) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case.

(c) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the person's history of previous violations, including the number of previous violations;

(2) the seriousness of the violation and of any pollution resulting from the violation;

(3) any hazard to the health or safety of the public;

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) any other factor the Commission considers relevant.

(d) Typical penalties. Typical penalties for violations of provisions of Title 3 of the Texas Natural Resources Code relating to pipeline safety, or of rules, orders, or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201, or Subchapter I (§§121.451 - 121.454), or a safety standard or rule relating to the transportation of gas and gas pipeline facilities adopted under those provisions are set forth in Table 1.
Figure: 16 TAC §8.135(d)

(e) Penalty enhancements for certain violations. For violations that involve threatened or actual pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty, as shown in Table 2. The enhancement may be in any amount in the range shown for each type of violation.
Figure: 16 TAC §8.135(e)

(f) Penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.
Figure 1: 16 TAC §8.135(f)
Figure 2: 16 TAC §8.135(f)

(g) Penalty reduction for settlement before hearing. The recommended penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(h) Demonstrated good faith. In determining the total amount of any penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement

action to remedy, in whole or in part, a violation of the pipeline safety rules or to mitigate the consequences of a violation of the pipeline safety rules.

(i) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the typical penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction. Figure: 16 TAC §8.135(i)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald
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Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §§8.203, 8.205, 8.210, 8.215, 8.225, 8.230, 8.235

The Commission proposes the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §81.0531, which requires the Commission to adopt by rule guidelines to be used in determining the amount of the penalty for a violation of a provision of Title 3 of the Texas Natural Resources Code, or a rule, order, license, permit, or certificate that relates to pipeline safety; Texas Natural Resources Code, §§117.001 - 117.102, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 United States Code Annotated, §§60101, et seq.; and Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.; §121.251 and §121.252, which authorize the Commission to regulate the use of malodorants in natural gas; and §§121.5005 - 121.507, which give the Commission authority to regulate the testing of natural gas piping systems in school facilities.

Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code, §§121.201 - 121.211; 121.251, 121.252; and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, et seq., are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code, §§121.201 - 121.211; 121.251 and 121.252; and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas on September 23, 2008.

§8.203. Supplemental Regulations.

The following provisions supplement the regulations appearing in 49 CFR Part 192, adopted under §8.1(b) of this chapter (relating to General Applicability and Standards).

[~~(1) Section 192.3 is supplemented by the following: "Short section of pipeline" means a segment of a pipeline 100 feet or less in length.~~]

(1) [~~(2)~~] Section 192.455(b) is supplemented by the following language after the first sentence: "Tests, investigation, or experience must be backed by documented proof to substantiate results and determinations."

(2) [~~(3)~~] Section 192.457 is supplemented:

(A) by the following language in subsection (b)(3): "(3) Bare or coated distribution lines. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other effective means, documented by data substantiating results and determinations";

(B) by adding the following subsection: "(d) When a condition of active external corrosion is found, positive action must be taken to mitigate and control the effects of the corrosion. Schedules must be established for application of corrosion control. Monitoring effectiveness must be adequate to mitigate and control the effects of the corrosion prior to its becoming a public hazard or endangering public safety."

(3) [~~(4)~~] Section 192.465 is supplemented:

(A) by the following language after the first sentence of subsection (a): "Test points (electrode locations) used when taking pipe-to-soil readings for determining cathodic protection shall be selected so as to give representative pipe-to-soil readings. Test points (electrode locations) over or near an anode or anodes shall not, by themselves, be considered representative readings";

[~~(B) by the following language in subsection (e): "(e) After the initial evaluation required by paragraphs (b) and (c) of §§192.455 and paragraph (b) of §§192.457, each operator shall, at intervals not exceeding three years, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other effective means, documented by data substantiating results and determinations";~~]

(B) [~~(C)~~] by the following subsection: "(f) When leak detection surveys are used to determine areas of active corrosion or re-evaluate unprotected pipelines, the survey frequency must be increased to monitor the corrosion rate and control the condition. The

detection equipment used must have sensitivity adequate to detect gas concentration below the lower explosive limit and be suitable for such use."

(4) [~~(5)~~] Section 192.475(a) is supplemented by the following language at the end: "Corrosive gas" means a gas which, by chemical reaction with the pipe to which it is exposed, usually metal, produces a deterioration of the material."

(5) [~~(6)~~] Section 192.479 is supplemented by the following subsection: "(d) [~~(c)~~] 'atmospheric corrosion' means aboveground corrosion caused by chemical or electrochemical reaction between a pipe material, usually a metal, and its environment, that produces a deterioration of the material."

§8.205. Written Procedure for Handling Natural Gas Leak Complaints.

Each gas company shall have written procedures which shall include at a minimum the following provisions:

(1) - (2) (No change.)

(3) a requirement that supervisory review of leak complaints must be completed and documented by 10:00 a.m. each day for calls received by midnight on the previous day [~~personnel review calls received and actions taken to insure no hazardous conditions exist at the close of the work day~~];

(4) - (7) (No change.)

§8.210. Reports.

(a) Accident, leak, or incident report.

(1) Telephonic report. At the earliest practical moment or within two hours following discovery, a gas company shall notify the Commission by telephone of any event that involves a release of gas from its pipelines defined as an incident in 49 CFR Part 191.3. [~~any pipeline which:~~]

[~~(A) caused a death or any personal injury requiring hospitalization;~~]

[~~(B) required taking any segment of a transmission line out of service, except as described in paragraph (2) of this subsection;~~]

[~~(C) resulted in unintentional gas ignition requiring emergency response;~~]

[~~(D) caused estimated damage to the property of the operator, others, or both totaling $5,000 or more, including gas loss; or~~]

[~~(E) could reasonably be judged by the operator as significant because of location, rerouting of traffic, evacuation of any building, media interest, etc., even though it does not meet subparagraphs (A), (B), (C), or (D) of this paragraph.~~]

[~~(2) A gas company shall not be required to make a telephonic report for a leak or incident which meets only paragraph (1)(B) of this subsection if that leak or incident occurred solely as a result of or in connection with planned or routine maintenance or construction.~~]

(2) [~~(3)~~] The telephonic report shall be made to the Commission's 24-hour emergency line at (512) 463-6788 and shall include the following:

(A) the operator or gas company's name;

(B) the location of the leak or incident;

(C) the time of the incident or accident;

(D) the fatalities and/or personal injuries;

(E) the phone number of the operator; [~~and~~]

(F) the telephone number of the operator's on-site person;

(G) estimated property damage, including the cost of gas lost, to the operator, others, or both; and

(H) [~~(F)~~] any other significant facts relevant to the accident or incident. Ignition, explosion, rerouting of traffic, evacuation of any building, and media interest are included as significant facts.

(3) [~~(4)~~] Written report.

(A) Following the initial telephonic report for accidents, leaks, or incidents described in paragraph (1) [~~paragraph (1)(A) - (C) and (E)~~] of this subsection, the operator who made the telephonic report shall submit to the Commission a written report summarizing the accident or incident. The report shall be submitted as soon as practicable within 30 calendar days after the date of the telephonic report. The written report shall be made [~~in duplicate~~] on forms supplied by the Department of Transportation. For reports submitted electronically to the Department of Transportation, the operator shall forward a copy of the report and confirmation to the Division or electronically to safety@rrc.state.tx.us. For reports not submitted electronically to the Department of Transportation, the operator shall send to the Division an original signed report form. [~~The Division shall forward one copy to the Department of Transportation.~~]

(B) The written report is not required to be submitted for master metered systems.

[~~(C) The written report is required for estimated damage to the property of the operator, others, or both totaling $50,000 or more, including gas loss.~~]

(C) [~~(D)~~] The Commission may require an operator to submit a written report for an accident or incident not otherwise required to be reported.

(b) Pipeline safety annual reports.

(1) Except as provided in paragraph (2) of this subsection, each gas company shall submit an annual report for its intrastate systems in the same manner as required by 49 CFR Part 191. The report shall be submitted to the Division [~~in duplicate~~] on forms supplied by the Department of Transportation not later than March 15 of a year for the preceding calendar year. [~~The Division shall forward one copy to the Department of Transportation.~~]

(2) (No change.)

(c) - (d) (No change.)

(e) Leak Reporting. Each operator shall submit to the Division a list of all leaks repaired on its pipeline systems. The report shall list all leaks identified on the entire pipeline system. Each operator shall also include the number of unrepaired leaks remaining on the operator's systems by leak grade. Each operator shall submit leak reports using the Commission's online reporting system, Form PS-95, by June 30 and December 31 of each calendar year, in accordance with the PS-95 Semi-Annual Leak Report Electronic Filing Requirements, set out in Figure 1 of this subsection. The report includes:

(1) leak location;

(2) facility type;

(3) leak classification;

(4) pipe size;

(5) pipe type;

(6) leak cause; and

(7) leak repair method.

Figure: 16 TAC §8.210(e)(7)

§8.215. Odorization of Gas.

(a) (No change.)

(b) Odorization equipment. Gas companies shall use commercially available odorization equipment [~~approved by the Commission as follows~~].

[~~(1) Commercial manufacturers of odorization equipment manufactured under accepted rules and practices of the industry shall submit plans and specifications of such equipment to the Division with Form PS-25 for approval of standardized models and designs. The Division shall maintain a list of approved commercially available odorization equipment.~~]

[~~(2)~~] Each operator shall be required to maintain a list of odorization equipment used in its particular operations, including the location of the odorization equipment, the brand name, model number, and the date last serviced. The list shall be available for review during safety evaluations by the Division.

[~~(3) Prior to using shop-made or other odorization equipment not approved by the Commission under paragraph (1) of this subsection, a gas company shall submit to the Division Form PS-25 and plans and specifications for the equipment. Within 30 days of receiving Form PS-25 and related documents, the Division shall notify the gas company in writing whether the equipment is approved or not approved for the requested use.~~]

(c) Malodorants. Gas companies shall use commercially available [~~The Division shall maintain a list of approved~~] malodorants which shall meet the following criteria.

(1) - (2) (No change.)

(3) The malodorant agent to be introduced in the gas, or the natural malodor of the gas, or the combination of the malodorant and the natural malodor of the gas shall have a distinctive malodor so that when gas is present in air at a concentration of one-fifth of the lower explosive limit [~~of as much as 1.0% or less by volume~~], the malodor is readily detectable by an individual with a normal sense of smell.

(4) (No change.)

(d) Malodorant tests and reports.

(1) (No change.)

(2) Each natural gas operator shall check, test, and service farm tap odorizers at intervals not exceeding 15 months, but at least once each calendar year [~~least annually according to the terms of the approved schedule of service and maintenance for farm tap odorizers Form PS-9, filed with and approved by the Division~~]. Each gas company shall maintain records to reflect the date of service and maintenance on file for at least two years.

(e) Malodorant concentration tests and reports.

(1) Each gas company shall conduct the following concentration tests on the gas supplied through its facilities and required to be odorized. [~~Other tests conducted in accordance with procedures approved by the Division may be substituted for the following room and malodorant concentration test meter methods.~~] Test points shall be distant from odorizing equipment, so as to be representative of the odorized gas in the system. Tests shall be performed at intervals not exceeding 15 months, but at least once each calendar year or at such other times as the Division may reasonably require. The results of these tests shall be recorded [~~on the approved odorant concentration test Form PS-6 or equivalent~~] and retained in each company's files for at least two years. Malodorant concentration test results shall include the following:

[~~(A) Room test--Test results shall include the following:~~]

[~~(i)~~] ~~odorizer name and location;~~]

[~~(ii)~~] ~~date test performed, test time, location of test, and distance from odorizer, if applicable;~~]

[~~(iii)~~] ~~percent gas in air when malodor is readily detectable; and~~]

[~~(iv)~~] ~~signatures of witnesses to the test and the supervisor of the test.~~]

[~~(B) Malodorant concentration test meter--Test results shall include the following:~~]

(A) [~~(i)~~] odorizer name and location;

(B) [~~(ii)~~] malodorant concentration meter make, model, and serial number;

(C) [~~(iii)~~] date test performed, test time, odorizer tested, and distance from odorizer[~~, if applicable~~];

(D) [~~(iv)~~] test results indicating percent gas in air when malodor is readily detectable; and

(E) [~~(v)~~] signature of person performing the test.

(2) - (3) (No change.)

§8.225. Plastic Pipe Requirements.

[~~(a) Plastic pipe failure report. Each operator shall record information relating to each material failure of plastic pipe during each calendar year, and annually shall file with the Division, in conjunction with the annual report required to be filed under §8.210(b) of this chapter (relating to Reports), a summary of the failures on Form PS-80, Annual Plastic Pipe Failure Report. Operators shall have filed initial Forms PS-80, reporting plastic pipe failure data for calendar year 2001, by March 15, 2002.~~]

(a) [~~(b)~~] Plastic pipe installation and/or removal report.

(1) Each operator shall have reported to the Commission on March 15, 2003, and March 15, 2004, the amount in miles of plastic pipe installed and/or removed during the preceding calendar year on Form PS-82, Annual Report of Plastic Installation and/or Removal. The mileage shall have been identified by:

(A) system;

(B) nominal pipe size;

(C) material designation code;

(D) pipe category; and

(E) pipe manufacturer.

(2) For all new installations of plastic pipe, each operator shall record and maintain for the life of the pipeline the following information for each pipeline segment:

(A) all specification information printed on the pipe;

(B) the total length;

(C) a citation to the applicable joining procedures used for the pipe and the fittings; and

(D) the location of the installation to distinguish the end points. A pipeline segment is defined as continuous piping where the

pipe specification required by ASTM D2513 or ASTM D2517 does not change.

(b) [~~(c)~~] Plastic pipe inventory report. Beginning March 15, 2005, and annually thereafter, each operator shall report to the Division the amount of plastic pipe in natural gas service as of December 31 of the previous year. The amount of plastic pipe shall be determined by a review of the records of the operator and shall be reported on Form PS-81, Plastic Pipe Inventory. The report shall include the following:

(1) system;

(2) miles of pipe;

(3) calendar year of installation;

(4) nominal pipe size;

(5) material designation code;

(6) pipe category; and

(7) pipe manufacturer.

(c) [~~(d)~~] Electronic format required. Operators of systems with more than 1,000 customers shall file the reports required by this section electronically in a format specified by the Commission.

(d) [~~(e)~~] Report forms; signature required. Operators shall complete all forms required to be filed in accord with this section, including signatures of company officials. The Commission may consider the failure of an operator to complete all forms as required to be a violation under Texas Utilities Code, Chapter 121, and may seek penalties as permitted by that chapter.

§8.230. School Piping Testing.

(a) - (b) (No change.)

(c) Testing.

(1) A natural gas piping pressure test performed under a municipal code in compliance with paragraphs (4) and (5) [~~paragraph (4)~~] of this subsection shall satisfy the testing requirements.

(2) A pressure test to determine if the natural gas piping in each school facility will hold at least normal operating pressure shall be performed as follows:

(A) School facility pipe testing includes all gas piping from the outlet of the purchase meter to each inlet valve of each appliance.

(B) [~~(A)~~] For systems on which the normal operating pressure is less than 0.5 psig, the test pressure shall be 5 psig and the time interval shall be 30 minutes.

(C) [~~(B)~~] For systems on which the normal operating pressure is 0.5 psig or more, the test pressure shall be 1.5 times the normal operating pressure or 5 psig, whichever is greater, and the time interval shall be 30 minutes.

(D) [~~(C)~~] A pressure test using normal operating pressure shall be utilized only on systems operating at 5 psig or greater, and the time interval shall be one hour.

(3) - (7) (No change.)

(d) (No change.)

§8.235. Natural Gas Pipelines Public Education and Liaison.

(a) Liaison activities required. Each operator of a natural gas pipeline or natural gas pipeline facilities or the operator's designated representative shall communicate and conduct liaison activities at intervals not exceeding 15 months, but at least once each calendar year [~~on an annual basis~~] with fire, police, and other appropriate public emergency response officials. The liaison activities are those required by 49 CFR Part 192.615(c)(1) - (4). These liaison activities shall be conducted in person, except as provided by this section.

(b) - (d) (No change.)

(e) Proximity to public school. Each owner or operator of a natural gas pipeline or natural gas pipeline facility any part of which is located within 1,000 feet of a public school building or public school recreational area shall notify the Commission by filing with the Safety Division, no later than January 15 of every even-numbered year, the following information:

(1) - (3) (No change.)

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2008.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 475-1295

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SUBCHAPTER D. REQUIREMENTS FOR HAZARDOUS LIQUIDS AND CARBON DIOXIDE PIPELINES ONLY

16 TAC §§8.301, 8.305, 8.310, 8.315

The Commission proposes the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §81.0531, which requires the Commission to adopt by rule guidelines to be used in determining the amount of the penalty for a violation of a provision of Title 3 of the Texas Natural Resources Code, or a rule, order, license, permit, or certificate that relates to pipeline safety; Texas Natural Resources Code, §§117.001 - 117.102, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 United States Code Annotated, §§60101, et seq.; and Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.; §121.251 and §121.252, which authorize the

Commission to regulate the use of malodorants in natural gas; and §§121.500 - 121.507, which give the Commission authority to regulate the testing of natural gas piping systems in school facilities.

Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.00 - 117.102; Texas Utilities Code, §§121.201 - 121.211; 121.251, 121.252; and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, et seq., are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code, §§121.201 - 121.211; 121.251 and 121.252; and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas on September 23, 2008.

§8.301. Required Records and Reporting.

(a) Accident reports. In the event of any failure or accident involving an intrastate pipeline facility from which any hazardous liquid or carbon dioxide is released, if the failure or accident is required to be reported by 49 CFR Part 195, the operator shall report to the Commission as follows.

(1) Incidents involving crude oil. In the event of an accident involving crude oil, the operator shall:

(A) notify the Division, which shall notify the Commission's appropriate Oil and Gas district office, by telephone to the Commission's emergency line at (512) 463-6788 at the earliest practicable moment following discovery of the incident (within two hours) and include the following information:

(i) - (v) (No change.)

(vi) telephone number of operator;

(vii) telephone number of the operator's on-site person;

(viii) [~~(vi)~~] other significant facts relevant to the accident or incident. Ignition, explosion, rerouting of traffic, evacuation of any building, and media interest are included as significant facts.

(B) within 30 days of discovery of the incident, submit a completed Form H-8 to the Oil and Gas Division of the Commission. In situations specified in the 49 CFR Part 195, the operator shall also file a copy [~~duplicate copies~~] of the required Department of Transportation form with the Division. For reports submitted electronically to the Department of Transportation, the operator shall forward a copy of the report and confirmation to the Division or electronically to safety@rrc.state.tx.us. If an operator does not submit reports electronically to the Department of Transportation, the operator shall send the report to the Division on an original signed report form.

(2) Hazardous liquids, other than crude oil, and carbon dioxide. For incidents involving hazardous liquids, other than crude oil, and carbon dioxide, the operator shall:

(A) notify the Division of such incident by telephone to the Commission's emergency line at (512) 463-6788 at the earliest practicable moment following discovery (within two hours) and include the information listed in paragraph (1)(A)(i) - (viii) of this subsection; and

(B) within 30 days of discovery of the incident, file [~~in duplicate~~] with the Division a written report using the appropriate Department of Transportation form (as required by 49 CFR Part 195) or a facsimile. For reports submitted electronically to the Department of Transportation, the operator shall forward a copy of the report and confirmation to the Division or electronically to safety@rrc.state.tx.us. If an operator does not submit reports electronically to the Department of Transportation, the operator shall send the report to the Division on an original signed report form.

(b) Annual report. Each operator shall file with the Commission an annual report for its intrastate systems located in Texas in the same manner as required by 49 CFR Part 195 [~~on Form PS-45 listing line sizes and lengths, hazardous liquids or carbon dioxide being transported, and accident/failure data~~]. The report shall be filed with the Commission on forms supplied by the Department of Transportation on or before March 15 of a year for the preceding calendar year reported.

(c) Safety-related condition reports. Each operator shall submit to the Division in writing a safety-related condition report for any condition specified in 49 CFR 195.

(d) [~~(c)~~] Facility response plans. Simultaneously with filing either an initial or a revised facility response plan with the United States Department of Transportation, each operator shall submit to the Division a copy of the initial or revised facility response plan prepared under the Oil Pollution Act of 1990, for all or any part of a hazardous liquid pipeline facility located landward of the coast.

§8.305. Corrosion Control Requirements.

Operators shall comply or ensure compliance with the following requirements for the installation and construction of new pipeline metallic systems, the relocation or replacement of existing facilities, and the operation and maintenance of steel pipelines.

[~~(1) Atmospheric corrosion control. Each aboveground pipeline or portion of pipeline exposed to the atmosphere shall be cleaned and coated or jacketed with material suitable for the prevention of atmospheric corrosion. For onshore pipelines, the intervals between inspections shall not exceed five years; for offshore pipelines, reevaluations shall be required at least once each calendar year, with intervals not to exceed 15 months.~~]

(1) [~~(2)~~] Coatings. All coated pipe used for the transport of hazardous liquids or carbon dioxide shall be electrically inspected prior to placement using coating deficiency (holiday) detectors to check for any faults not observable by visual examination. The holiday detector shall be operated in accordance with manufacturer's instructions and at a voltage level appropriate for the electrical characteristics of the pipeline system being tested.

(2) [~~(3)~~] Installation. Joints, fittings, and tie-ins shall be coated with materials compatible with the coatings on the pipe.

(3) [~~(4)~~] Cathodic protection test stations. Electrical measurements [~~Each cathodically protected pipeline shall have test stations or other electrical measurement contact points sufficient to determine the adequacy of cathodic protection. These locations~~] shall include but are not limited to pipe casing installations and all foreign metallic cathodically protected structures. [~~Test stations (electrode locations) used when taking pipe-to-soil readings for determining cathodic protection shall be selected to give representative pipe-to-soil readings.~~] Readings taken at test stations (electrode locations) over or near one or more anodes shall not, by themselves, be considered representative.

(A) All test lead wire attachments and bared test lead wires shall be coated with an electrically insulating material. Where

the pipe is coated, the insulation of the test lead wire material shall be compatible with the pipe coating and wire insulation.

(B) Cathodic protection systems shall meet or exceed the minimum criteria set forth in Criteria For Cathodic Protection of the most current edition of the National Association of Corrosion Engineers (NACE) Standard RP-01-69.

(4) [~~(5)~~] Monitoring and inspection.

[~~(A) Each cathodic protection rectifier or impressed current power source shall be inspected at least six times each calendar year, with intervals not to exceed 2 1/2 months, to ensure that it is operating properly.~~]

[~~(B) Each reverse-current switch, diode, and interference bond whose failure would jeopardize structure protection shall be checked electrically for proper performance six times each calendar year, with intervals not to exceed 2 1/2 months. Each remaining interference bond shall be checked at least once each calendar year, with intervals not to exceed 15 months.~~]

[~~(C)~~] Each operator shall utilize right-of-way inspections to determine areas where interfering currents are suspected. In the course of these inspections, personnel shall be alert for electrical or physical conditions which could indicate interference from a neighboring source. Whenever suspected areas are identified, the operator shall conduct appropriate electrical tests within six months to determine the extent of interference and take appropriate action.

(5) [~~(6)~~] Remedial action. Each operator shall take prompt remedial action to correct any deficiencies observed during monitoring.

§8.310. Hazardous Liquids and Carbon Dioxide Pipelines Public Education and Liaison.

(a) Liaison activities required. Each operator of a hazardous liquid or carbon dioxide pipeline or pipeline facilities or the operator's designated representative shall communicate and conduct liaison activities at intervals not exceeding 15 months, but at least once each calendar year [~~on an annual basis~~] with fire, police, and other appropriate public emergency response officials. The liaison activities are those required by 49 CFR Part 195.402(c)(12). These liaison activities shall be conducted in person, except as provided by this section.

(b) - (e) (No change.)

§8.315. Hazardous Liquids and Carbon Dioxide Pipelines or Pipeline Facilities Located Within 1,000 Feet of a Public School Building or Facility.

(a) - (b) (No change.)

(c) Each pipeline owner and operator to which this section applies shall, for each pipeline or pipeline facility any part of which is located within 1,000 feet of a public school building containing classrooms, or within 1,000 feet of any other public school facility where students congregate, file with the Commission's Safety Division, no later than January 15 of every odd numbered year, [~~2005, and every two years thereafter,~~] the following information:

(1) - (3) (No change.)

(d) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2008.

TRD-200805125
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 475-1295

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SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §8.245

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Railroad Commission of Texas proposes the repeal of §8.245, relating to Penalty Guidelines for Pipeline Safety Violations. The Commission proposes the repeal in order to propose the same rule under a different rule number. The proposed new rule, §8.135, with the same title, is proposed in a concurrent rulemaking.

Mary McDaniel, Director, Safety Division, has determined that for each year of the first five years the proposed repeal will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Texas Government Code, §2006.002, requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Ms. McDaniel has determined that there is no adverse economic effect on small businesses or micro-businesses, because the repeal is being proposed for the purpose of moving the rule to a different subchapter.

Ms. McDaniel has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be clarification of the Commission's pipeline safety violation penalties, by having the rule in the subchapter that applies to all pipelines.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until 5:00 p.m. on Monday, November 10, 2008, which is 31 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons over two additional weeks to review, analyze, draft, and submit comments. Comments should refer to GUD Docket No. 9757. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. McDaniel at (512) 463-7166. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the repeal under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §81.0531, which requires the Commission to adopt by rule guidelines to be used in determining the amount of the penalty for a violation of a provision of Title 3 of the Texas Natural Resources Code, or a rule, order, license, permit, or certificate that relates to pipeline safety; and Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

Texas Natural Resources Code, §§81.051, 81.052, and 81.0531; Texas Utilities Code, §§121.201 - 121.210; and 49 United States Code Annotated, §§60101, et seq., are affected by the proposed repeal.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 81.0531; Texas Utilities Code, §§121.201 - 121.210; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, §§81.051, 81.052, and 81.0531; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas on September 23, 2008.

§8.245. Penalty Guidelines for Pipeline Safety Violations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2008.

TRD-200805121
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 475-1295

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PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 47. BLANKET RULES

16 TAC §47.1, §47.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Alcoholic Beverage Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Alcoholic Beverage Commission proposes the repeal of Chapter 47, titled Blanket Rules, which includes §47.1, relating to severability and §47.2, relating to blanket penalty.

Government Code, §2001.39 requires that each state agency review and consider for readoption every four years each rule adopted by the agency under Government Code, Chapter 2001. Sections 47.1 and 47.2 have been reviewed and the commission has determined that they are obsolete and are no longer necessary. The adoption of the Administrative Procedure Act, Government Code, Chapter 2001, has made §47.1 obsolete. Sections 11.61 through 11.65 and 61.71 through 61.79 of the Alcoholic Beverage Code, and Chapter 34 of the agency rules have made §47.2 obsolete. Additionally, there is no necessity after the repeal of these sections to have a chapter entitled Blanket Rules.

Charlie Kerr, Chief Financial Officer, has determined that for the first five years that the proposed repeal is in effect there will be no fiscal impact on units of state or local government as a result of the repeal of this chapter and sections.

Mr. Kerr has determined that for the first five years following the repeal there will be no fiscal impact on small or micro-businesses. There is no anticipated impact on persons as a result of the repeal of the chapter and sections.

Sherry Cook, Assistant Administrator, has determined that for each of the first five years following the repeal it is anticipated that the public will benefit by not having obsolete rules in the laws of the State of Texas.

Comments on the proposed repeal may be addressed to Joan Bates, Deputy General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711. Comments will be accepted for 30 days following publication of the repeal in the *Texas Register*.

The proposed repeal of the existing rules is authorized by §5.31 of the Alcoholic Beverage Code, and §2001.039 of the Government Code.

Cross Reference: Section 5.31 is affected by the repeal.

§47.1. Severability.

§47.2. Blanket Penalty.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 26, 2008.

TRD-200805214
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 206-3204

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CHAPTER 49. PRODUCTION OF ALCOHOLIC BEVERAGES

16 TAC §49.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the

Texas Alcoholic Beverage Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Alcoholic Beverage Commission proposes the repeal of Chapter 49, titled Production of Alcoholic Beverages, which includes §49.1, relating to production practices in general.

Government Code, §2001.39 requires that each state agency review and consider for readoption every four years each rule adopted by the agency under Government Code, Chapter 2001.

Section 49.1 relates to good manufacturing standards for wineries, wine bottlers and rectifiers. The section was adopted in 1976 and it has not been updated for current good manufacturing standards. Further, the Department of State Health Services (DSHS) regulates, inspects, and adopts rules for good manufacturing standards for all food manufacturers, which include wineries, wine bottlers and rectifiers. DSHS inspectors have expertise and special training in good manufacturing standards while our agents and auditors are not trained in this area and do not perform inspections to ensure compliance with this rule. This rule is no longer necessary as a commission rule. Additionally, there is no necessity after the repeal of this section to have a Chapter entitled Production of Alcoholic Beverages.

Charlie Kerr, Chief Financial Officer, has determined that for each of the first five years that the proposed repeal is in effect, there will be no fiscal impact on units of state or local government as a result of the repeal of this chapter and section.

Mr. Kerr has determined that for each of the first five years that the proposed repeal is in effect, there will be no fiscal impact on small or micro-businesses. There is no anticipated impact on persons as a result of the repeal of the chapter and section.

Sherry Cook, Assistant Administrator, has determined that for each of the first five years that the proposed repeal is in effect, it is anticipated that the public will benefit by not having obsolete rules in the laws of the State of Texas.

Comments on the proposed repeal may be addressed to Joan Bates, Deputy General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711. Comments will be accepted for 30 days following publication of the proposed repeal in the *Texas Register*.

The proposed repeal of the existing rule is authorized by §5.31 of the Alcoholic Beverage Code, and §2001.039 of the Government Code.

Cross Reference: Section 5.31 is affected by the repeal.

§49.1. Production Practices in General.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 26, 2008.

TRD-200805215
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 206-3204

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.75

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.75, concerning Confidential Client Communications.

The amendment to §501.75 will eliminate the words "or other compulsory process" following the term "court order" and add the language "signed by a judge" in order to make it clear that CPAs should only release client records to other parties without their client's consent when a judge orders its release.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to eliminate current confusion as to the meaning of "or other compulsory process".

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the proposed rule does not change state law but only clarifies it.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on November 10, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the pro-

posed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted;, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.75. Confidential Client Communications.

Except by permission of the client or the authorized representatives of the client, a person or any partner, officer, shareholder, or employee of a person shall not voluntarily disclose information communicated to him by the client relating to, and in connection with, professional accounting services or professional accounting work rendered to the client by the person. Such information shall be deemed confidential. However, nothing herein shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures pursuant to a court order signed by a judge [~~or other compulsory process~~], in investigations or proceedings under the Act, in ethical investigations conducted by private professional organizations, or in the course of peer reviews.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 25, 2008.

TRD-200805165
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 305-7848

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION
SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §523.140

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.140, concerning Program Standards.

The amendment to §523.140 will emphasize advanced documentation required when a course is posted for CPE credit.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer understanding of the prerequisites of a program for a potential participant and an understanding of the retention of course materials.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because providing the advance notice of course prerequisites will only entail a short additional sentence in the course sponsor's advertising materials. The retention requirement will not entail significant costs.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on November 10, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted. Finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.140. Program Standards.

(a) Participants should be informed in advance of objectives, prerequisites, experience level, content, and recommended credit hours so potential participants can determine whether they are qualified to participate in and benefit from the program. If no prerequisite is necessary, a statement to this effect must be made. [~~The sponsor "program" must clearly state in the course materials, registration materials and advertisements related to the course, the objectives, prerequisites, experience level, content, advance preparation, teaching method(s), and recommended credit hours. Sponsors are responsible for distributing accurate information about their programs.~~]

[~~(1) The stated learning objectives should clearly communicate the specific concepts and skills the program will transfer to persons completing it.~~]

[~~(2) All programs must clearly identify what prerequisites are necessary for enrollment, so a potential participant can determine whether they are qualified to participate in and benefit from the program. If no prerequisite is necessary a statement to this effect must be made.~~]

(b) The program developer must organize the program around the stated learning objectives and must retain a copy of the final program in accordance with §523.143(b) of this title (relating to Sponsor's Record). The stated learning objectives should clearly communicate the specific concepts and skills of the program. The course materials must be periodically reviewed to assure that they are accurate and consistent with currently accepted standards relating to the program's subject matter.

[~~(1)~~] The program developer should provide the instructor with separate materials that emphasize sections of the course that need reinforcement, if appropriate.[~~;~~]

[~~(2) The program developer should provide materials for the participants that explain the learning objective in detail.~~]

(c) Instructors must be qualified both with respect to program content and teaching methods used. Sponsors should evaluate the performance of instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors.

(d) Course material should be reviewed by a qualified party other than the preparer(s) to ensure compliance with the provisions of these sections and with high standards of content and instructional design. In case of short or once only programs, more reliance may be placed on the competence of the presenter.

(e) All programs must provide for some means to evaluate both the competence of the instructor and the course material. Refer to §523.141 of this title (relating to Evaluation).

(f) Self-study programs must conform to the requirements outlined in §523.102(c)(2) of this title (relating to CPE Purpose and Definitions).

(g) Sponsors are responsible for ensuring the participants register their attendance during the program. The sponsor is responsible for assigning the appropriate number of credit hours for participants, including reduced hours for those participants who arrive late or leave early. Refer to §523.142 of this title [~~title~~] (relating to Time Credit Measurement).

(h) Sponsors must comply with all CPE rules including §523.143 of this title [~~(relating to Sponsor's Record)~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 25, 2008.

TRD-200805163
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 305-7848

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22 TAC §523.143

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.143, concerning Sponsor's Record.

The amendment to §523.143 will emphasize the documents required to be kept by the sponsor.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer understanding of the course materials that are required to be retained by the course sponsor.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it clarifies the requirement of the sponsor to retain course material notification. The retention requirement will not entail significant costs.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on November 10, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be

impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted. Finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.143. Sponsor's Record.

(a) In order to support the reports required of participants, the sponsor of group or self-study programs must retain the following records [~~for an appropriate period~~]:

(1) record of participation, e.g., sign-in sheet;

(2) course program [~~materials~~] as required by §523.140(b) [~~§523.140~~] of this title (relating to Program Standards);

(3) advance notification as required by §523.140(a) of this title and promotional materials, if any; [~~date(s);~~]

(4) date(s); [~~location;~~]

(5) location; [~~instructor(s);~~]

(6) instructor(s), including resume or biography; [~~number of credit hours; and~~]

(7) number of credit hours; and [~~evaluation of program as directed in §523.141(b) of this title (relating to Evaluation).~~]

(8) evaluation of program as directed in §523.141(b) of this title (relating to Evaluation).

(b) To satisfy the detailed requirements of all jurisdictions, a retention period of three years from the date the program is completed is appropriate. The record of attendance should reflect the credit hours earned by each participant, including those who arrive late or leave early.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 25, 2008.

TRD-200805164
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 305-7848

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 353. INTRODUCTORY PROVISIONS

SUBCHAPTER I. ETHICS AND CONFLICTS OF INTEREST

31 TAC §353.130

The Texas Water Development Board (Board) proposes new §353.130 (regarding Financial Analysts and Service Providers) in new Subchapter I (regarding Ethics and Conflicts of Interest) in Chapter 353 (regarding Introductory Provisions). Simultaneously with this proposed rulemaking, the Board is proposing the repeal of Chapter 365 (regarding Investment Rules), including Subchapter A, §§365.1, 365.2, and 365.5 - 365.10 (regarding General Provisions) and Subchapter B, §§365.11 - 365.21 (regarding Investment Procedures) elsewhere in this issue. The rules in Chapter 365 are no longer necessary because the Board has adopted a policy document that contains the investment policy and strategies that are identical to those found in Chapter 365. The provisions in §365.10(c) and (d) (regarding Ethics and Conflict of Interest), however, concern the avoidance and reporting of conflicts of interest by financial analysts and service providers. These provisions must be adopted by rule, under Government Code §2263.004. Thus, the Board proposes to adopt these same exact provisions in new §353.130 simultaneously with their repeal from Chapter 365.

Melanie Callahan, Chief Financial Officer, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section.

Ms. Callahan has also determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the new rule will be none since this rule already existed elsewhere and is merely being proposed in a new section. There are no anticipated economic costs to persons who are required to comply with the rule as proposed, for the same reason.

Comments on the proposed rule will be accepted for 30 days following publication and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, *rulescomments@twdb.state.tx.us*, or by fax at (512) 463-5580.

The rule is proposed under the authority of the Texas Water Code §6.101, which provides the Board with the authority to adopt rules necessary to carry out the powers and duties of the Board.

Cross reference to statute: Texas Government Code, Chapter 2263.

§353.130. Financial Analysts and Service Providers.

(a) Financial analysts and service providers described by Government Code §2263.004 should avoid:

(1) any relationship with any party to a transaction with the board or authority, other than a relationship necessary to the investment or funds management services that the financial advisor or service provider performs for the board or authority, if a reasonable person could expect the relationship to diminish the financial advisor's

or service provider's independence of judgment in the performance of the person's responsibilities to the board or authority; and

(2) any direct or indirect pecuniary interest in any party to a transaction with the board or authority, if the transaction is connected with any financial advice or service the financial advisor or service provider provides to the board or authority or to a member of the board in connection with the management or investment of state funds.

(b) Financial analysts or service providers described by Government Code §2263.004 must report any relationship or pecuniary interest described in subsection (a) of this section in writing to the executive administrator or designated representative, without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 29, 2008.

TRD-200805246
Kenneth L. Peterson
General Counsel
Texas Water Development Board
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 463-8061

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CHAPTER 365. INVESTMENT RULES

The Texas Water Development Board (Board) proposes the repeal of Chapter 365, Investment Rules, including Subchapter A, §§365.1, 365.2, and 365.5 - 365.10 (relating to General Provisions) and Subchapter B, §§365.11 - 365.21 (relating to Investment Procedures).

The Board has determined that the rules in Chapter 365 are no longer necessary because the Board has adopted a policy document that contains the investment policy and strategies that are identical to those found in Chapter 365. The repeal will also allow the Board to administer its investment policies in a more efficient manner by eliminating the need to perform a rulemaking in order to change an investment policy or strategy. The provisions in §365.10(c) and (d) (relating to Ethics and Conflict of Interest) continue to be necessary and are simultaneously proposed as new §353.130 in Chapter 353 of this title elsewhere in this issue of the *Texas Register*.

Melanie Callahan, Chief Financial Officer, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal as proposed.

Ms. Callahan has also determined that for each year of the first five years the proposed repeal is in effect the public will benefit from the repeal because the deletion of unnecessary rules will enhance the efficiency of the Board's operations. There will be no impact on local economies. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no effect on small or micro businesses.

Comments on the proposed repeal will be accepted for 30 days following publication and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, *rulescomments@twdb.state.tx.us*, or by fax at (512) 463-5580.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §§365.1, 365.2, 365.5 - 365.10

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Water Development Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the authority of the Texas Water Code §6.101, which provides the Board with the authority to adopt rules necessary to carry out the powers and duties of the Board.

Cross reference to statute: Texas Government Code Chapter 2256.

§365.1. Scope of Chapter.
§365.2. Definition.
§365.5. Policy.
§365.6. Prudence.
§365.7. Objectives and Strategies.
§365.8. Delegation of Authority.
§365.9. Training.
§365.10. Ethics and Conflicts of Interest.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 29, 2008.

TRD-200805245
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 463-8061

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SUBCHAPTER B. INVESTMENT PROCEDURES

31 TAC §§365.11 - 365.21

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Water Development Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the authority of the Texas Water Code §6.101, which provides the Board with the authority to adopt rules necessary to carry out the powers and duties of the Board.

Cross reference to statute: Texas Government Code Chapter 2256.

§365.11. Authorized Dealers.
§365.12. Selection of Authorized Dealers.
§365.13. Authorized and Suitable Investments.

§365.14. Collateralization.
§365.15. Delivery, Safekeeping and Custody.
§365.16. Diversification.
§365.17. Maximum Maturities.
§365.18. Internal Control.
§365.19. Performance Standards.
§365.20. Market Yield, Benchmark.
§365.21. Reporting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 29, 2008.

TRD-200805247
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 463-8061

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 18. DRIVER EDUCATION

SUBCHAPTER A. COMMERCIAL DRIVER TRAINING SCHOOL TESTING AND ISSUANCE OF INSTRUCTION PERMITS

37 TAC §18.1, §18.4

The Texas Department of Public Safety proposes amendments to Chapter 18, §18.1 and §18.4, concerning Driver Education. Amendment to §18.1(6) replaces "four" copies of the Texas Driver Education Certificate (form DE-964) with "three" copies due to a change in the form initiated by the Texas Education Agency that now consists of three copies. Amendments to §18.4(b) add the language "or electronic records of the exam" in order to allow commercial driver training school to administer and/or maintain an electronic record of the actual Class C Road Signs and Road Rules exam as part of the permanent student instruction record. An additional amendment to §18.4(b) adds "for a period of three years from the date of the exam" in order to specify the retention schedule for commercial driver training school to maintain exam records in the same manner as the Texas Education Agency rule, Chapter 176, §176.1016 Records, which states the schools shall maintain all student records for at least three years from the date of the exams.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to establish a clear record retention schedule for commercial driver training schools who maintain examination records for individuals who have attended such a course. The rule also provides for a reduction in paperwork by only requiring three copies of the Texas Driver Education Certificate (form DE-964) instead of four.

The Department has determined that this proposal is not a "major environmental rule" as defined by Governmental Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The Department has determined that Chapter 2007 of the Governmental Code does not apply to these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§18.1. Definitions.

Unless otherwise defined, the terms in these rules shall have the same meaning assigned to them in the Transportation Code, Chapter 521, concerning driver's licenses and certificates. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (5) (No change.)

(6) Texas Driver Education Certificate--form DE-964, is a numbered, two-part form consisting of three [~~four~~] copies and is used to certify completion of both classroom and laboratory phases of the driver education course. Under the parent taught program the certificate is sent to the Driver License office indicated on the Request for Driver Education Packet form DL-92. The Driver License office will file the certificate upon receipt for security purposes and it will remain under the control of the department.

§18.4. Reporting Issuance of Instruction Permit.

(a) (No change.)

(b) The FOR INSTRUCTION PERMIT ONLY part of the certificate shall be completed and dated on the same day the instruction permit is issued by the driver training school. The certificate will serve as verification to the department that the required examinations were administered by the school and that the student has passed the required examinations and has met all other requirements for the issuance of an

instruction permit. The actual Class C--Road Signs and Class C--Road Rules exams or electronic records of the exams, and the results of the vision exam administered by the school shall be kept by the driver training school as part of the permanent student instruction record. The tests shall be made available for inspection and review with other parts of the student instruction record by department or TEA personnel for a period of three years from the date of the exams.

(c) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 25, 2008.

TRD-200805207
Stanley E. Clark
Director
Texas Department of Public Safety
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 424-2135

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.77

The Texas Board of Criminal Justice proposes new §151.77, concerning Purchasing and Contracting with Historically Underutilized Businesses (HUBs). The purpose of the rule is to adopt by reference the Comptroller of Public Accounts (CPA) rules related to the HUB program as required by law.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to provide the public notice of the process for contracting with HUBs.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The new rule is proposed under Texas Government Code, Chapter 2161 and §493.012.

Cross Reference to Statutes: Texas Government Code, §492.013.

§151.77. Purchasing and Contracting with Historically Underutilized Businesses (HUBs).

(a) The Texas Board of Criminal Justice (TBCJ or Board) hereby adopts by reference the rules of the Texas Comptroller of Public Accounts (CPA) codified in 34 Texas Administrative Code, Part 1, Chapter 20, Subchapter B, relating to the HUB Program. The Texas Department of Criminal Justice (TDCJ or Agency) shall comply with these rules and Texas Government Code, §493.012.

(b) It is the intent of the TBCJ that all contracts for construction projects and for the purchase of goods and services be awarded in compliance with the applicable Texas purchasing laws, the Texas Constitution and the United States Constitution. No preference shall be provided to a business, except as provided by Texas Government Code, Chapter 2155, Subchapter H.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 26, 2008.

TRD-200805244
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 463-0422

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 17. STATE PENSION REVIEW BOARD

CHAPTER 604. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

40 TAC §604.1

The State Pension Review Board ("Board") proposes an amendment to §604.1, concerning Historically Underutilized Businesses (HUB). The purpose of the amendment is to change the reference to the rules adopted by reference from the Texas Building and Procurement Commission 1 TAC Part 5, §§111.11 - 111.28 to the Comptroller of Public Accounts 34 TAC Part 1, Chapter 20, Subchapter B.

Ben Armendariz, Accountant/HR Director, has determined that for each year of the first five years the proposed amendment will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the amended rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Armendariz has further determined that for each year of the first five years the proposed amendment is in effect, the public benefits anticipated as a result of the proposed amendment will provide a more uniform and consistent approach for procuring goods and services from HUB vendors. There is no anticipated economic cost to persons who are required to comply with the amended rule. There is no anticipated difference in cost of compliance between micro, small, and large businesses and no anticipated economic cost for these entities. State agencies are required to comply with the rules for historically underutilized businesses as adopted by the Comptroller of Public Accounts.

Comments concerning the proposed amendment should be submitted within 30 days of publication to Christopher Hanson, Interim Executive Director, State Pension Review Board, P.O. Box 13498, Austin, Texas 78711-3498, or by e-mail to *prb@prb.state.tx.us*.

The amendment is proposed under the rulemaking authority provided in Texas Government Code, Title 8, Subtitle A and §2161.003, which requires that the Board adopt the Comptroller of Public Accounts' rules for Historically Underutilized Businesses. Section 802.201 of the Texas Government Code provides that the Board shall adopt rules for the conduct of business.

No other codes, statutes, or rules are affected by this proposal.

§604.1. Historically Underutilized Businesses.

In accordance with Texas Government Code §2161.003, the [~~The~~] Board adopts by reference the rules of the Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter B, regarding historically underutilized businesses [~~promulgated by the Texas Building and Procurement Commission (TBPC) regarding historically underutilized businesses, which are set forth in Title 1 Part 5 TAC §§111.11-111.28 as amended~~]. A copy of the Comptroller of Public Accounts [~~TBPC~~] rules may be obtained by writing to: [~~Virginia Smith,~~] Executive Director, State Pension Review Board, P.O. Box 13498, Austin, Texas 78711-3498, or by accessing the Web site of the Secretary of State, at www.sos.state.tx.us/tac/.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 25, 2008.

TRD-200805160
Lynda Baker
Executive Assistant
State Pension Review Board
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 463-1736

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

43 TAC §1.2

The Texas Department of Transportation (department) proposes amendments to §1.2, concerning organization and responsibilities.

EXPLANATION OF PROPOSED AMENDMENTS

Government Code, §2001.039 requires a state agency to review each of its rules every four years or more frequently and, as a result of the review, to decide whether to readopt, amend, or repeal the rule. In the course of reviewing the rule relating to the organization of the department, the department identified changes that need to be made.

Amendments to §1.2, Texas Department of Transportation, change the name of the Automobile Theft Prevention Authority (authority) and remove language that refers to the authority's staff. House Bill 1887, 80th Legislature, 2007 changed the name of the authority from the Automobile Theft Prevention Authority to the Automobile Burglary and Theft Prevention Authority. Section 1.2(e) is amended to reflect that change. In 1997 the legislature removed the authority's authority to employ staff and required the authority to use staff of the department. To reflect existing law, the amendments delete the last sentence of §1.2(e), which refers to the authority's staff.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Bob Jackson, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Jackson has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be increased understanding of the proper name of the authority. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §1.2 may be submitted to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on November 10, 2008.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Tex. Rev. Civ. Stat. Ann. art. 4413(37).

§1.2. Texas Department of Transportation.

(a) - (d) (No change.)

(e) Automobile Burglary and Theft Prevention Authority. The Automobile Burglary and Theft Prevention Authority (authority) is an independent authority within the department. The authority undertakes a variety of programs designed to reduce thefts of motor vehicles. [~~The authority's staff is included within the department's Vehicle Titles and Registration Division.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 26, 2008.

TRD-200805225
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 463-8683

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SUBCHAPTER D. PROCEDURE FOR ADOPTION OF RULES

43 TAC §1.11

The Texas Department of Transportation (department) proposes amendments to §1.11, concerning procedure for adoption of rules.

EXPLANATION OF PROPOSED AMENDMENTS

Government Code, §2001.039 requires a state agency to review each of its rules every four years or more frequently and, as the result of the review, to decide whether to readopt, amend, or repeal the rule. In the course of reviewing the rule relating to the procedure for the adoption of rules, the department identified a minor change that needs to be made.

Amendments to §1.11, Petition, correct the reference to the Administrative Procedure Act and for convenience provides a citation to the part of the act that relates to initiating rulemaking proceedings.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Bob Jackson, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Jackson has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be increased understanding of the rule due to accurate legal references. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §1.11 may be submitted to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on November 10, 2008.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2001, Subchapter B.

§1.11. Petition.

Any interested person may petition the department requesting the adoption of a rule. Such petition must be in writing directed to the engineer-director at the department's headquarters building in Austin and shall contain a clear and concise statement of the substance of the proposed rule, together with a brief explanation of the purpose to be accomplished through such adoption. Within 60 days after receipt, the department will either deny the petition in writing, stating its reasons therefor, or will initiate rulemaking proceedings in accordance with the Administrative Procedure [~~and Texas Register~~] Act (Government Code, Chapter 2001, Subchapter B).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 26, 2008.

TRD-200805226
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 463-8683

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CHAPTER 17. VEHICLE TITLES AND REGISTRATION

The Texas Department of Transportation (department) proposes amendments to §17.3, Motor Vehicle Certificates of Title, §17.22, Motor Vehicle Registration, and §17.28, Specialty License Plates, Symbols, Tabs, and Other Devices.

EXPLANATION OF PROPOSED AMENDMENTS

The proposed amendments are necessary to update and clarify existing information. In 2003, the Legislature amended Transportation Code, §551.303 authorizing the use of neighborhood electric vehicles (NEVs) on roadways posted with speeds of 35 miles per hour or less. The department was authorized to adopt rules relating to the registration and issuance of license plates for these vehicles in new Transportation Code, §551.302. In 2005, the Legislature added a definition for NEV to Transportation Code, §551.301. This definition corresponds with the federal definition. The rules set out the department's policy regarding NEVs.

The department reviewed the timelines for replacement plates in order to decrease costs and to eliminate unnecessary replacements which, in turn, reduces waste. The amendments to §17.22 eliminate the requirement for cancellation of a license plate upon receipt of one public complaint about the alpha-numeric pattern; and standardize when general issue, personalized, or specialty license plates are reissued at no charge with the time period that all general issue and personalized plates are scheduled to be replaced.

Amendments to §17.28 clarify the re-use of license plates that were issued the same year as the year model of an Antique, Classic Motor Vehicle, or Classic Travel Trailer; standardize when personalized or specialty license plates are reissued at no charge; clarify the required proof of an organization's current non-profit status upon application for a new non-profit specialty license plate; and update the application, review, and approval

process for development of new non-profit specialty license plates.

Amendments to §17.3(a), certificates of title, add new paragraph (3) to define what constitutes an NEV and to clarify the title requirements for NEVs. An NEV must meet the standards established for low speed vehicles in Federal Motor Vehicle Safety Standard 500 (49 C.F.R. §571.500) and may be either electric or alternative fueled. An NEV is described as a four-wheeled motor vehicle that must attain a speed of at least 20 miles per hour but no more than 25 miles per hour, and that has a gross vehicle weight of less than 3,000 pounds. Subsequent paragraphs are renumbered accordingly.

Amendments to §17.3(c)(1)(A) add clause (iv) to clarify that the manufacturer's certificate of origin for a new neighborhood electric vehicle (NEV) must include a statement from the manufacturer that the vehicle meets the standards of Federal Motor Vehicle Safety Standard 500 (49 C.F.R. §571.500) for low speed vehicles. This declaration from the manufacturer is necessary to ensure the certificate of title and motor vehicle record properly identifies the vehicle as an NEV for which operation on the public roads is restricted.

Amendments to §17.22(c)(3)(B) clarify when a license plate may be cancelled or not issued due to the license plate's alpha-numeric pattern being objectionable or misleading. Other amendments to §17.22(c)(3)(B) delete the provision for cancellation of a license plate as a result of receiving one public complaint about the license plate's alpha-numeric pattern being objectionable or misleading. The department believes that one complaint may not be sufficient justification to take action to cancel or not issue a license plate, and that the determination whether to cancel or not issue a license plate should be based on the number and content of the complaint or complaints received.

Amendments to §17.22(d)(7) standardize the timeframe for reissuance at no-charge of all license plates to maintain reflectivity standards established by the department and for consistency. Subparagraph (A) is deleted to eliminate the provisions for reissuance of license plates at no charge that are over five years old upon the request of the owner. This is a cost saving to the department because there is no need for replacement since the plates still meet all the appropriate standards. Additional changes accurately describe when license plates shall be issued at no charge by the county tax assessor-collectors. Currently, replacement is required when license plates are "over eight years old"; however, based on the existing method used by the department to determine the plate age of a license plate, license plates shall be replaced when they are "over seven years old from the date of issuance". Previously, the department calculated the plate age from the "renewal date" or the date the license plate was first renewed. Now the plate age is calculated based on the "birth date" or date of issuance, of the license plates. This change also establishes a uniform license plate age that requires replacement due to the possible loss of reflectivity.

Amendments to §17.22(e), replacement of license plates, symbols, tabs, and other devices, delete the requirement for a notarized affidavit when an applicant requests replacement of a plate that is lost, stolen, or mutilated. A statement to that effect continues to be required; however, the statement does not need to be notarized.

New §17.22(h) adds the requirement that neighborhood electric vehicles (NEV) be titled in order to be registered for operation on public roads, as provided by Transportation Code, §502.152. This subsection also clarifies that NEV operation on public roads is restricted and an NEV may only be operated in accordance with Transportation Code, §551.303, must display a slow-moving-vehicle emblem as provided in Transportation Code, §547.001, and is subject to all traffic and other laws applicable to motor vehicles. An NEV must comply with the evidence of financial responsibility requirements established in Transportation Code, §502.153 prior to issuance of registration and the license plate classification that will be assigned to an NEV upon registration. Subsequent subsections are redesignated accordingly.

Amendments to §17.28(c)(2) clarify when old license plates are eligible for re-use, in accordance with Transportation Code, §§504.501, 504.5011, and 504.502. New §17.28(c)(2)(A) clarifies the restrictions on use when the original license plate use was restricted to a specific vehicle type, or the original license plate was a qualifying license plate. New §17.28(c)(2)(B) clarifies that if the original license plate use was restricted to a specific vehicle type, or the original license plate was a qualifying license plate, the license plate may be used on an Exhibition Vehicle, Classic Motor Vehicle, or Classic Travel Trailer. Subsequent language on validation stickers and tabs is moved from paragraph (3) of §17.28(c) and reorganized into new §17.28(c)(2)(C) to improve readability.

Amendments to §17.28(d)(3)(E)(ii) standardize the timeframe for reissuance at no-charge of personalized and specialty license plates, to be consistent with the timeframes provided for general issue plates in §17.22(d)(7). The amendments change the reissuance period for personalized license plates from every "six years" to every "seven years" from the date of issuance and changes the reissuance period for specialty license plates from every "eight years" to every "seven years" from the date of issuance.

New §17.28(i), Development of new specialty license plates, provides the process for development of new specialty license plates, including the application requirements and process for approval of new designs submitted by non-profit organization applicants. Extensive rearrangement of the existing paragraphs is made for clarity and to improve readability. New language is added to update and clarify the application requirements, and the review and approval process.

New §17.28(i)(1), procedure, contains the same substance as deleted §17.28(i)(1), providing a general description of the procedure and providing the statutory citation that authorizes development of new specialty license plates.

New §17.28(i)(2), special license plate committee, contains the same substance as deleted §17.28(i)(1)(A) regarding how the specialty license plate committee is established. The schedule for committee meetings has been changed by deleting "once every six months" and adding "as needed" to allow committee meetings to be held based on the number of applications received, if any, and to decrease the non-profit's organization's waiting time.

New §17.28(i)(3), applications for the creation of new specialty license plates, contains the same substance as deleted §17.28(i)(2)(B) regarding the requirement that an applicant submit a written application and the information that must accompany the application. This new section clarifies that certification from the Internal Revenue Service must certify that the applicant's status as a non-profit entity is current at the time of application. Additionally, a licensing agreement from

the appropriate third party is required if the applicant is using a design or design element that is intellectual property.

New §17.28(i)(4), committee review process, contains the same substance as deleted §17.28(i)(1)(B), regarding requests for additional information by the committee, the committee review of applications for license plates that are restricted to certain individuals or groups, and requiring a complete application if the application is to be considered by the committee.

New §17.28(i)(5), request for additional information, amends the substance of deleted §17.28(i)(2)(B) to clarify that if additional information is requested by the committee, and the information is not received by the requested due date, the application will be returned as incomplete. New §17.28(i)(5)(B) is added to provide an exception that allows the committee to tentatively approve an application, pending receipt of the additional information, if the committee determines that the additional information is not critical for committee consideration and approval of the application. The department understands that some information requested by the committee is not critical to making a decision on the application, but is necessary for the committee to make a recommendation on the new specialty license plate to the executive director.

New §17.28(i)(6), committee recommendation, contains the same substance as deleted §17.28(i)(1)(C) providing the criteria used by the committee as a basis for their recommendation for approval of a new specialty license plate design. The "projected sales of the license plate as demonstrated in the marketing plan and by the listing of target purchasers" has been deleted as an item that is taken into consideration by the committee when making a recommendation because such a restriction is not necessary as long as the deposit is made. The deposit ensures that the department will recoup its expenditures. Clarification has been added that the committee will consider whether the license plate design "appears to meet" the department's legibility and reflectivity standards, and meets the department's uniqueness standards when making their recommendation. Whether a design meets the legibility and reflectivity standards cannot be determined until an actual license plate of that design is manufactured and tested. New §17.28(i)(6)(C) clarifies that the deposit information previously included in subsection (i)(3)(A) must be provided before a recommendation may be made.

New §17.28(i)(7), public comment on proposed design, contains the same substance as deleted §17.28(i)(1)(D) regarding posting of proposed specialty license plate designs on the department's website but deletes the requirement for posting notice of the new license plate design in the *Texas Register* for a 10-day period to receive public comments to be consistent with the postings for vendor specialty license plates. New paragraph (7) is also updated to provide current information relating to the simultaneous notification the department currently makes to all other specialty license plate organizations and their sponsoring agencies to advise of the posting and how comments must be submitted on the proposed license plate design.

New §17.28(i)(8), final approval, contains the same provisions as deleted §17.28(i)(2)(B)(iv) and (v) regarding approval of designs recommended by the committee, and if a design is disapproved, a new application and supporting documentation must be submitted for the design to be reconsidered for approval. Additionally, the executive director of the department must currently approve new specialty license plate designs. This new paragraph expands the approval authority to allow a designee of the executive director, not below the level of division director, to approve new specialty license plate designs.

New §17.28(i)(9), issuance of specialty plates, contains the same provisions as deleted §17.28(i)(3) that address the process once a new specialty license plate design has been approved, including the requirement for submission of either a deposit or the specified number of applications for the new license plate, as provided in Transportation Code, §504.702. Additionally, this new paragraph provides that the department has final approval of all specialty license plate designs. The department may adjust or reconfigure submitted draft designs to comply with the format of the license plate specifications. The department will not post an adjusted or reconfigured design on the department's website for additional comment.

New §17.28(i)(10), redesign of specialty license plate, contains the same substance as deleted §17.28(i)(4) providing that the applicant may request a redesign of a previously approved specialty license plate design and that the redesigned license plate will go through the same approval process as a new specialty license plate design. "Original or a subsequent" has been deleted when referring to the applicant as this language is unnecessary. Language is added to clarify that a "redesign" replaces an existing design, including only a change to the license plate design, and does not encompass changes to the number of alpha-numeric characters or alpha-numeric pattern on the license plate, the funding recipient, or any other change that requires programming modifications. Language is also added to require that the request must be made in writing.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for the first five years the amendments as proposed are in effect, there will be some positive fiscal implications and cost savings for state and local governments as a result of administering the amendments regarding the standardization of the time periods for issuance of replacement license plates at no cost.

For the first five years the amendments are in effect, the state would realize a $103,000 revenue increase to the State Highway Fund as result of collection of additional replacement license plate fees, and an annual cost savings of $5.9 million to the State Highway Fund due to the decreased number of replacement license plates required to be manufactured and issued. Local governments will also realize a $98,000 revenue increase as a result of collection of additional replacement fees.

There will be no fiscal implications for state and local governments as a result of enforcing or administering the amendments to §17.22 regarding the process for denial or cancellation of license plates that are determined to be objectionable or misleading; the amendments to §17.28 regarding the re-use of old license plates on Antique or Classic motor vehicles; and the amendments to §17.28 regarding the application requirements and approval process for development of new specialty license plate designs.

The amendments to §17.3 and §17.22, which require neighborhood electric vehicles (NEV) to be titled, will increase the number of certificates of title application fees collected; however, the department has no way to determine how many NEVs are sold or brought into Texas that would be required to pay the certificate of title application fee. The application fee for each certificate of title is $28 or $33, dependent on the county in which the application is filed, of which $3 is deposited to the State Highway Fund, $5 is deposited to the state General Revenue Fund, $5 is

given to the county, and the remaining $15 or $20 is deposited to the Texas Emission Reduction Plan. If the owner chooses to register the NEV, payment of motor vehicle registration fees that average $60 will also be required. The state retains $40 which is deposited to the State Highway Fund and the counties receive the remaining $20.

Rebecca Davio, Director, Vehicle Titles and Registration Division (VTR), has certified that there will not be a significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Ms. Davio has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to provide the motoring public with clear guidance with regard to the requirement to title a neighborhood electric vehicle.

There is also a public benefit through amending the provisions for cancellation or non-issuance of license plates. The minimum number of complaints received for the VTR director to consider license plate cancellation based on the alphanumeric pattern is removed. Currently, VTR only receives a handful of complaints concerning personalized plates each year, and only one complaint is needed to cancel a license plate which could be deemed unreasonable by the license plate owner. The amendments would continue to allow the department to cancel a license plate based on a single complaint if such action is warranted.

Public benefit is gained through standardizing the reissuance at no-charge of license plates, as the current rule presents different "plate ages" at when a plate may be replaced. Various time guidelines in effect for general issue, personalized, and specialty license plates cause confusion among the public. Removal of the option to replace a license plate at five years (providing the plate is eligible for renewal) will result in an overall cost benefit to the state due to unnecessary replacement of plates. New materials used and current manufacturing technology result in license plates with a longer life span and reflectorization that last for periods beyond eight years.

The anticipated economic costs for persons required to comply with the amendments to §17.3 and §17.22 that require an NEV owner to title an NEV is payment of a title application fee of either $28 or $33, dependent on the county of residence. If the NEV owner chooses to register the NEV, payment of motor vehicle registration fees that average $60 will also be required.

There will be no adverse economic effect on small businesses that are currently in compliance with the motor vehicle dealer licensing requirements for sellers of motor vehicles that can be titled, including neighborhood electric vehicles. For those small businesses that are not in compliance there may be some economic impact. Currently, sellers of vehicles that can be titled are required to be licensed through the department's Motor Vehicle Division (MVD). Twenty-two dealers that sell NEVs and eight manufacturers are licensed by MVD. Potentially, there are some sellers of NEVs that are not licensed; however, for purposes of this fiscal note, there is no way to determine how many NEV sellers are not in compliance with the state motor vehicle dealer license laws.

Each of these non-compliant persons would be required to obtain a Franchised Motor Vehicle Dealer License to sell new NEVs and a General Distinguishing Number under Occupations Code, Chapter 2301 to sell used NEVs. Occupations Code, §2301.264 sets an annual sliding license fee for a Franchised Motor Vehicle Dealer License of between $175 and $750 depending on the number of units sold annually. A licensed Franchised Motor Vehicle Dealer would also be required to obtain a General Distinguishing Number which has an initial fee of $500 and a renewal fee of $200 annually.

Government Code, §2006.002 requires that state agencies prepare a regulatory flexibility analysis to analyze alternatives to the proposed rules. These alternatives should be consistent with the health, safety, environmental, and economic welfare of the state; accomplish the objectives of the rule; and minimize adverse impacts on small business. The department analyzed several alternatives to meet the goals outlined.

The goal of the proposed rule is to protect the interests of NEV owners and lien holders and to provide the public with current information on what an NEV is, what safety and other requirements apply to NEVs, and guidance on how and when NEVs may legally be operated on public roads. These vehicles are relatively new to the market and ownership and operation of small low-speed-type vehicles, including NEVs, is steadily escalating due to the increased cost of gasoline and environmental and emissions concerns. Many people do not know how to differentiate between vehicles that can be titled and registered for legal operation on the public roads, and those that cannot, such as vehicles manufactured for off-road use for farming or ranching. They may be unfamiliar with what is considered an NEV and be unaware of the restrictions on use of these vehicles.

One alternative to the proposed rule amendments is to continue to allow owners to title and register NEVs as slow-moving vehicles as an option if they so choose. In this case, the public will not know about the mile per hour restriction of NEVs, and may use them improperly on roads posted more than 35 m.p.h. People may also continue to operate NEVs in violation of the law and under unsafe conditions. This alternative creates a greater workload on law enforcement agencies that are required to enforce the laws. This alternative does not alleviate the non-compliant sellers from the motor vehicle dealer licensing requirements.

Another alternative is to require NEVs to be titled, but not to allow registration or license plates to be issued. The requirement to title NEVs would protect the owner and lien holder interests by creating an official ownership record for the vehicle and would allow lien holders to record liens in order to protect their financial interests. However, the vehicles would not display license plates to identify them as vehicles that are eligible for operation on the road. Operation on the roads is monitored and enforced solely by local law enforcement. This alternative does not provide guidance to the public regarding when and where the vehicles may be legally operated and creates problems for law enforcement due to lack of visible license plates for tracking violations and identifying offenders. This alternative does not alleviate the problem of non-compliant sellers from the motor vehicle dealer licensing requirements.

One other alternative is to prohibit issuance of a certificate of title and registration to NEVs. The vehicles would then be prohibited from operating on any public roads. This alternative may be highly objectionable to NEV owners, manufacturers, and sellers, and to the groups who are promoting the use of this type of vehicle due to their low emissions and other environmental benefits. The potential financial impact to businesses that currently manufacture and sell NEVs to Texas purchasers may be considerable. Additionally, owners may unknowingly purchase an

NEV, or own an NEV and move to Texas, and be unable to use the vehicle except on private property.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §17.3, §17.22, and §17.28 may be submitted to Rebecca Davio, Director, Vehicle Titles and Registration Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on November 10, 2008.

SUBCHAPTER A. MOTOR VEHICLE CERTIFICATES OF TITLE

43 TAC §17.3

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which authorizes the Texas Transportation Commission (commission) to promulgate rules for the conduct of the work of the department, and more specifically Transportation Code, §502.0021, which authorizes the adoption of rules to administer the registration of vehicles, Transportation Code, §502.180, which authorizes the adoption of rules for the issuance of license plate or registration insignia, Transportation Code, §504.004, which authorizes the commission to adopt rules to implement the statutes relating to specialty license plates, and Transportation Code, §551.302, which authorizes the adoption of rules relating to the registration of neighborhood electric vehicles.

CROSS REFERENCE TO STATUTE

Transportation Code, §§502.052, 502.152, 502.153, 502.180, 502.184, 504.501, 504.5011, 504.502, 504.702, 504.801, 547.001, and 551.301 - 551.303.

§17.3. Motor Vehicle Certificates of Title.

(a) Certificates of title. Unless otherwise exempted by law or this chapter, the owner of any motor vehicle that is required to be registered in accordance with Transportation Code, Chapter 502, shall apply for a Texas certificate of title in accordance with Transportation Code, Chapter 501.

(1) - (2) (No change.)

(3) Neighborhood electric vehicles.

(A) The title requirements of a neighborhood electric vehicle (NEV) are the same requirements prescribed for any motor vehicle.

(B) A "neighborhood electric vehicle" is a motor vehicle that:

(i) is originally manufactured to meet, and meets, the equipment requirements and safety standards established for "low speed vehicles" in Federal Motor Vehicle Safety Standard 500 (49 C.F.R. §571.500);

(ii) is a slow moving vehicle, as defined by Transportation Code, §547.001 that is able to attain a speed of more than 20 miles per hour, but not more than 25 miles per hour in one mile on a paved, level surface;

(iii) is a four-wheeled motor vehicle;

(iv) is powered by electricity or alternative power sources;

(v) has a gross vehicle weight rating (GVWR) of less than 3,000 pounds; and

(vi) is not a golf cart as defined in Transportation Code, §502.001(7).

(4) [~~(3)~~] Exemptions from title. Vehicles registered with the following distinguishing license plates may not be titled under Transportation Code, Chapter 501:

(A) vehicles eligible for machinery license plates and permit license plates in accordance with Transportation Code, §504.504; and

(B) vehicles eligible for farm trailer license plates in accordance with Transportation Code, §502.163, unless the owner chooses to title a farm semitrailer as provided by Transportation Code, §501.036.

(5) [~~(4)~~] Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers shall apply for and receive a Texas certificate of title for any stand alone (full) trailer, including homemade full trailers, or any semitrailer having a gross weight in excess of 4,000 pounds. Farm semitrailers with a gross weight of more than 4,000 pounds that are registered in accordance with Transportation Code, §504.504, may be issued Texas certificates of title. House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph to be titled.

(A) In the absence of a manufacturer's rated carrying capacity for a trailer or semitrailer, the rated carrying capacity will not be less than one-third of its empty weight.

(B) Mobile office trailers, mobile oil field laboratories, and mobile oil field bunkhouses are not designed as dwellings, but are classified as commercial semitrailers and must be registered and titled as commercial semitrailers if operated on the public streets and highways.

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle designed for living quarters and that is eight body feet or more in width or forty body feet or more in length (not including the hitch), is classified as a manufactured home or mobile home and is titled under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, administered by the Texas Department of Housing and Community Affairs.

(ii) A house trailer-type vehicle that is less than eight feet in width and less than forty feet in length is classified as a travel trailer and shall be registered and titled.

(iii) A camper trailer shall be titled as a house trailer and shall be registered with travel trailer license plates.

(iv) A recreational park model type trailer that is primarily designed as temporary living quarters for recreational, camping or seasonal use, is built on a single chassis, and is 400 square feet or less when measured at the largest horizontal projection when in the set up mode shall be titled as a house trailer and may be issued travel trailer license plates. If the park model type trailer exceeds eight feet in width or forty feet in length, the title will include a brand to indicate that an oversize permit must be obtained to move the trailer on the public roads.

(b) (No change.)

(c) Evidence of motor vehicle ownership. Evidence of motor vehicle ownership properly assigned to the applicant must accompany

the certificate of title application. Evidence must include, but is not limited to, the following documents.

(1) New motor vehicles. A manufacturer's certificate of origin assigned by the manufacturer or the manufacturer's representative or distributor to the original purchaser is required for a new motor vehicle that is sold or offered for sale.

(A) The manufacturer's certificate of origin must be in the form prescribed by the division director and must contain, at a minimum, the following information:

(i) motor vehicle description including, but not limited to, the motor vehicle's year, make, model, identification number, body style and empty weight;

(ii) the manufacturer's rated carrying capacity in tons when the manufacturer's certificate of origin is invoiced to a licensed Texas motor vehicle dealer and is issued for commercial motor vehicles as that term is defined in Transportation Code, Chapter 502; [~~and~~]

(iii) a statement identifying a motor vehicle designed by the manufacturer for off-highway use only; and [~~.~~]

(iv) if the vehicle is a "neighborhood electric vehicle", a statement that the vehicle meets Federal Motor Vehicle Safety Standard 500 (49 C.F.R. §571.500) for low-speed vehicles.

(B) (No change.)

(2) - (5) (No change.)

(d) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 26, 2008.

TRD-200805227
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 463-8683

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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §17.22, 17.28

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which authorizes the Texas Transportation Commission (commission) to promulgate rules for the conduct of the work of the department, and more specifically Transportation Code, §502.0021, which authorizes the adoption of rules to administer the registration of vehicles, Transportation Code, §502.180, which authorizes the adoption of rules for the issuance of license plate or registration insignia, Transportation Code, §504.004, which authorizes the commission to adopt rules to implement the statutes relating to specialty license plates, and Transportation Code, §551.302, which authorizes the adoption of rules relating to the registration of neighborhood electric vehicles.

CROSS REFERENCE TO STATUTE

Transportation Code, §§502.052, 502.152, 502.153, 502.180, 502.184, 504.501, 504.5011, 504.502, 504.702, 504.801, 547.001, and 551.301 - 551.303.

§17.22. Motor Vehicle Registration.

(a) - (b) (No change.)

(c) Vehicle registration insignia.

(1) - (2) (No change.)

(3) In accordance with Transportation Code, §502.052 and §502.180(e), the department will cancel or not issue any license plate containing an alpha-numeric sequence that meets one or more of the following criteria.

(A) (No change.)

(B) The executive director finds that the alpha-numeric pattern may be considered objectionable or misleading [~~by one or more members of the public for any reason~~], including that the pattern may be viewed as having, directly or indirectly:

(i) - (vi) (No change.)

(C) (No change.)

(4) (No change.)

(d) Vehicle registration renewal.

(1) - (6) (No change.)

(7) License plate reissuance [~~and recall~~] program.

[~~(A) The county tax assessor-collectors are authorized to issue new multi-year license plates at no additional charge on request by the owner at the time of registration renewal, provided the current plates are over five years old.~~]

[~~(B)~~] The county tax assessor-collectors shall issue new multi-year license plates at no additional charge at the time of registration renewal provided the current plates are over seven [~~eight~~] years old from the date of issuance.

(e) Replacement of license plates, symbols, tabs, and other devices.

(1) When a license plate, symbol, tab, or other registration device is lost, stolen, or mutilated, a replacement may be obtained from any county tax assessor-collector upon: [~~as prescribed by law.~~]

(A) the payment of the statutory replacement fee prescribed by Transportation Code, §502.184; and

(B) the provision of a signed statement, on a form prescribed by the department, that states:

(i) the license plate, symbol, tab, or other registration device furnished for the described vehicle has been lost, stolen, or mutilated, and if recovered, will not be used on any other vehicle; and

(ii) the replaced license plate, symbol, tab, or other device will only be used on the vehicle to which it was issued.

[~~(2) To obtain a replacement, the owner must properly execute an affidavit containing the vehicle description, the original license plate number, and a sworn statement that the license plate, symbol, tab, or other registration device furnished for the described vehicle has been lost, stolen, or mutilated, and will not be used on any other vehicle.~~]

(2) [~~(3)~~] If the owner remains in possession of any part of the lost, stolen, or mutilated license plate, symbol, tab, or other registration device, that remaining part must be removed and surrendered to the department on issuance of the replacement and request by the county tax assessor-collector.

(f) - (g) (No change.)

(h) A neighborhood electric vehicle, as defined in §17.3(a)(3) of this chapter:

(1) is required to be titled in accordance with Transportation Code, §502.152 in order to be registered for operation on public roads;

(2) may be operated on a residential street, roadway, or public highway in accordance with Transportation Code, §551.303;

(3) must comply with the evidence of financial responsibility requirements established in Transportation Code, §502.153;

(4) must meet the definition of a "slow-moving vehicle" and must display a slow-moving-vehicle emblem as described in Transportation Code, §547.001; and

(5) is subject to all traffic and other laws applicable to motor vehicles.

(i) [~~(h)~~] Enforcement of traffic warrant. A municipality may enter into a contract with the department under Government Code, Chapter 791 to indicate in the state's motor vehicle records that the owner of the vehicle is a person for whom a warrant of arrest is outstanding for failure to appear or who has failed to pay a fine on a complaint involving a violation of a traffic law. In accordance with Transportation Code, §702.003, a county tax assessor collector may refuse to register a motor vehicle if such a failure is indicated in motor vehicle record for that motor vehicle. A municipality is responsible for obtaining the agreement of the county in which the municipality is located to refuse to register motor vehicles for failure to pay civil penalties imposed by the municipality.

(j) [~~(i)~~] Refusal to register due to traffic signal violation. A local authority, as defined in Transportation Code, §541.002, that operates a traffic signal enforcement program authorized under Transportation Code, Chapter 707 may enter into a contract with the department under Government Code, Chapter 791 to indicate in the state's motor vehicle records that the owner of a motor vehicle has failed to pay the civil penalty for a violation of the local authority's traffic signal enforcement system involving that motor vehicle. In accordance with Transportation Code, §707.017, a county tax assessor-collector may refuse to register a motor vehicle if such a failure is indicated in the motor vehicle record for that motor vehicle. The local authority is responsible for obtaining the agreement of the county in which the local authority is located to refuse to register motor vehicles for failure to pay civil penalties imposed by the local authority.

(k) [~~(j)~~] Refusal to register vehicle in certain counties. A county may enter into a contract with the department under Government Code, Chapter 791 to indicate in the state's motor vehicle records that the owner of the vehicle has failed to pay for a fine, fee, or tax that is past due. In accordance with Transportation Code, §502.185, a county tax assessor-collector may refuse to register a motor vehicle if such a failure is indicated in motor vehicle record for that motor vehicle.

(l) [~~(k)~~] Record notation. A contract between the department and a county, municipality, or local authority entered into under Transportation Code, §502.185, Transportation Code, §702.003, or Transportation Code, §707.017 will contain the terms set out in this subsection.

(1) To place or remove a registration denial flag on a vehicle record, the contracting entity must submit a magnetic tape or other acceptable submission medium as determined by the department in a format prescribed by the department.

(2) The information submitted by the contracting entity will include, at a minimum, the vehicle identification number and the license plate number of the affected vehicle.

(3) If the contracting entity data submission contains bad or corrupted data, the submission medium will be returned to the contracting entity with no further action by the department.

(4) The magnetic tape or other submission medium must be submitted to the department from a single source within the contracting entity.

(5) The submission of a magnetic tape or other submission medium to the department by a contracting entity constitutes a certification by that entity that it has complied with all applicable laws.

§17.28. Specialty License Plates, Symbols, Tabs, and Other Devices.

(a) - (b) (No change.)

(c) Initial issuance of specialty license plates, symbols, tabs, or other devices.

(1) (No change.)

(2) Exhibition Vehicle, Classic Motor Vehicle, and Classic Travel Trailer.

(A) License plates. Texas license plates that were issued the same year as the model year of an Exhibition Vehicle, Classic Motor Vehicle, or Classic Travel Trailer, may be displayed on that vehicle under Transportation Code, §§504.501, 504.5011, and 504.502, unless:

(i) the license plate's original use was restricted by statute to another vehicle type; or

(ii) the license plate is a qualifying plate type that originally required the owner to meet one or more eligibility requirements.

(B) Validation stickers and tabs. The department will issue validation stickers and tabs for display on license plates that are displayed as provided by subparagraph (A) of this paragraph.

(3) [~~(2)~~] Number of plates issued.

(A) Two plates. Unless otherwise listed in subparagraph (B) of this paragraph, two specialty license plates, each bearing the same license plate number, will be issued per vehicle.

(B) One plate. One license plate will be issued per vehicle for all motorcycles and for the following specialty license plates:

(i) Antique Vehicle;

(ii) Classic Travel Trailer;

(iii) Cotton Vehicle;

(iv) Disaster Relief;

(v) Forestry Vehicle;

(vi) Golf Cart;

(vii) Log Loader;

(viii) Military Vehicle; and

(ix) Parade.

(C) Registration number. The identification number assigned by the military may be approved as the registration number instead of displaying Military Vehicle license plates on a former military vehicle.

[(3) Validation stickers and tabs. Instead of license plates, the department will issue validation stickers and tabs to the following vehicles.]

[(A) Classic Motor Vehicles. Validation stickers will be issued for display on vehicles with existing Texas license plates that were originally issued the same year as the model year of a Classic Motor Vehicle.]

[(B) Certain Exhibition Vehicles. Validation stickers or tabs will be issued for display on vehicles with existing Texas license plates that were originally issued the same year as the model year of the Exhibition Vehicle.]

(4) (No change.)

(5) Classification of golf carts and neighborhood electric vehicles.

(A) If a golf cart does not meet the statutorily prescribed criteria for Golf Cart license plates but must be registered, its registration classification will be determined by whether it is designed as a 4-wheeled truck, a 4-wheeled passenger vehicle, or a 3-wheeled motorcycle.

(B) The registration classification of a neighborhood electric vehicle, as defined by §17.3(a)(3) of this chapter will be determined by whether it is designed as a 4-wheeled truck or a 4-wheeled passenger vehicle.

(6) - (7) (No change.)

(8) Personalized plate numbers.

(A) - (B) (No change.)

(C) Personalized plates not approved. A personalized license plate number will not be approved by the director if the alphanumeric sequence:

(i) (No change.)

(ii) would violate §17.22(c)(3) of this subchapter [chapter], as determined by the executive director; or

(iii) (No change.)

(D) - (G) (No change.)

(d) Specialty license plate renewal.

(1) - (2) (No change.)

(3) Renewal.

(A) - (D) (No change.)

(E) Issuance of validation insignia. On receipt of a completed license plate renewal application and prescribed documentation, the department will issue registration validation insignia as specified in §17.22 of this subchapter, except for those plates listed in clauses (i) or (ii) of this subparagraph or unless this section or other law requires the issuance of new license plates to the owner.

(i) (No change.)

(ii) New license plates shall be issued at no extra cost every seven [six] years from the date of issuance for specialty license plates and renewed personalized license plates, [and every eight years from the date of issuance for other specialty license plates,] in accordance with the provisions of §17.22 of this subchapter.

(F) (No change.)

(e) - (h) (No change.)

(i) Development of new specialty license plates.

(1) Procedure. The following procedure governs the process of authorizing new specialty license plates under Transportation Code, §504.801 whether the new license plate originated as a result of an application or as a department initiative.

(2) Specialty license plate committee. The executive director will appoint no fewer than three employees of the department to the specialty license plate committee. The committee shall meet as necessary to review completed specialty license plate applications.

(3) Applications for the creation of new specialty license plates. An applicant for the creation of a new specialty license plate, other than a vendor specialty plate under §17.40 of this subchapter, must submit a written application on a form approved by the director. The application must include:

(A) the applicant's name, address, telephone number, and other identifying information as directed on the form;

(B) certification on Internal Revenue Service letterhead stating that the applicant is a not-for-profit entity, and that the applicant's non-profit status is current at the time of application;

(C) a draft design of the specialty license plate;

(D) projected sales of the plate, including an explanation of how the projected figure was established;

(E) a marketing plan for the plate, including a description of the target market;

(F) a licensing agreement from the appropriate third party for any intellectual property design or design element;

(G) a letter from the executive director of the sponsoring state agency stating that the agency agrees to receive and distribute revenue from the sale of the specialty license plate and that the use of the funds will not violate a statute or constitutional provision; and

(H) other information necessary for the committee to reach a decision regarding approval of the requested specialty plate.

(4) Committee review process. The committee:

(A) will not consider incomplete applications;

(B) may request additional information from an applicant if necessary for a decision; and

(C) will consider specialty license plate applications that are restricted by law to certain individuals or groups of individuals (qualifying plates) using the same procedures as applications submitted for plates that are available to everyone (non-qualifying plates), including using the limited number of potential purchasers as a factor in the approval decision.

(5) Request for additional information. If the committee determines that additional information is needed, the applicant must return the requested information not later than the requested due date. If the additional information is not received by that date, the committee will return the application as incomplete unless the committee:

(A) determines that the additional requested information is not critical for committee consideration and approval of the application; and

(B) approves the application, pending receipt of the additional information by a specified due date.

(6) Committee recommendation. The recommendation of the committee will be based on:

(A) compliance with Transportation Code, §504.801;

(B) the proposed license plate design, including:

(i) whether the design appears to meet the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness; and

(iii) other information provided during the application process; and

(C) the applicant's ability to comply with Transportation Code, §504.702, relating to the required deposit or application that must be provided before the manufacture of a new specialty license plate.

(7) Public comment on proposed design. If the committee recommends the issuance of the proposed specialty license plate design, notice of the license plate design will be posted on the department's Internet web site to receive public comment. Simultaneously, the department will notify all other specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design must be submitted in writing through the mechanism provided on the department's Internet website for submission of official comments, and must be received by the department within 10 days after the date that the notice is posted on the department's website.

(8) Final approval.

(A) Approval. The executive director of the department, or the executive director's designee, not below the level of division director, will approve or disapprove the specialty license plate application based on the committee's recommendation and on comments received during the comment period.

(B) Application not approved. If the application is not approved under subparagraph (A) of this paragraph, the applicant may submit a new application and supporting documentation for the design to be considered again by the committee.

(9) Issuance of specialty plates.

(A) If the specialty license plate is approved, the applicant must comply with Transportation Code, §504.702 before any further processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The department has final approval authority of all specialty license plate designs and may adjust or reconfigure the submitted draft design to comply with the format or license plate specifications.

(C) If the department, in consultation with the applicant, adjusts or reconfigures the design, the adjusted or reconfigured design will not be posted on the department's website for additional comments.

(10) Redesign of specialty license plate.

(A) Upon receipt of a written request from the applicant, the department will allow redesign of a specialty license plate.

(B) A request for a redesign must meet all application requirements and proceed through the approval process of a new specialty plate as required by this subsection.

(C) An approved license plate redesign does not require the deposit required by Transportation Code, §504.702, but the applicant must pay a redesign cost to cover administrative expenses.

~~[(i) Development of new specialty license plates.]~~

~~[(1) Procedure. The following procedure governs the process of authorizing new specialty license plates under Transportation Code, §504.801. It applies whether the new license plate originated as a result of an application or on the department's own initiative.]~~

~~[(A) The executive director will appoint no fewer than three employees of the department to a specialty license plate committee. The committee shall meet at least once every six months and shall review all completed specialty license plate applications.]~~

~~[(B) The committee may request additional information from an applicant if necessary to reach a decision.]~~

~~[(C) The recommendation of the committee will be based on the following:]~~

~~*[(i)* the projected sales of the license plate as demonstrated in the marketing plan and by the listing of target purchasers;]~~

~~*[(ii)* compliance with Transportation Code, §504.801; and]~~

~~*[(iii)* other information provided during the application process.]~~

~~[(D) If the committee recommends the issuance of a proposed specialty license plate, notice of the proposed new license plate will be published in the *Texas Register* and the license plate design will be posted on the department's web site to receive public comment. Comments must be received 10 days from the date the notice is published in the *Texas Register*.]~~

~~[(E) Specialty license plate applications that are restricted to certain individuals or groups of individuals (qualifying plates) will be reviewed by the committee using the same procedures as applications submitted for plates that are available to everyone (non-qualifying plates). The limited number of potential purchasers will be a factor in the approval decision.]~~

~~[(2) Applications for the creation of new specialty license plates.]~~

~~[(A) Requirements. To apply for the creation of a new specialty license plate, an applicant must submit a written application on a form approved by the director. The application shall include:]~~

~~*[(i)* the applicant's name, address, telephone number, and other identifying information as directed on the form;]~~

~~*[(ii)* a current certification provided by the Internal Revenue Service on that department's letterhead, stating that the applicant is a not-for-profit enterprise;]~~

~~*[(iii)* a draft design of the specialty license plate;]~~

~~*[(iv)* projected sales of the plate, including an explanation of how the projected figure was established;]~~

~~*[(v)* a marketing plan for the plate including a description of the target market;]~~

~~*[(vi)* a letter from the executive director of the sponsoring state agency stating that the agency agrees to receive and dis-~~

~~tribute revenues from the specialty license plate and that the use of the funds will not violate a statute or constitutional provision; and]~~

~~*[(vii)* other information necessary for the committee to reach a decision regarding approval of the requested specialty plate.]~~

~~[(B) Application Process.]~~

~~*[(i)* The application must be complete to be considered by the committee.]~~

~~*[(ii)* If the committee reviews an application and determines that additional information is needed from the applicant that may contribute to the application decision, the decision on the application will be postponed until the next committee meeting.]~~

~~*[(iii)* If the additional requested information is not received prior to the next committee meeting the application will not be considered and will be returned to the applicant as incomplete.]~~

~~*[(iv)* The executive director will make the final decision on the specialty license plate application based on the committee's recommendation and the comments received during the posting period.]~~

~~*[(v)* An applicant whose application is not approved by the executive director must submit a new application and supporting documentation to be considered again by the committee.]~~

~~[(3) Issuance of specialty plates.]~~

~~[(A) If the specialty license plate is approved, the applicant must comply with Transportation Code, §504.702 before any further design and processing of the license plate.]~~

~~[(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The department has final approval of all specialty license plate designs and can adjust or reconfigure the submitted draft design to comply with the format of the license plate specifications.]~~

~~[(4) Redesign of specialty license plate.]~~

~~[(A) At the request of the original or subsequent applicant, the department may redesign a specialty license plate.]~~

~~[(B) A request for a new design will go through the application and approval process required by this subsection.]~~

~~[(C) An approved license plate redesign does not require the full deposit required by Transportation Code, §504.702.]~~

~~[(D) The original or subsequent applicant will pay a redesign cost to cover administrative expenses.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 26, 2008.

TRD-200805228
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: November 9, 2008
For further information, please call: (512) 463-8683

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CHAPTER 21. RIGHT OF WAY

SUBCHAPTER M. QUARRY AND PIT SAFETY

The Texas Department of Transportation (department) proposes amendments to §21.701, Purpose and Scope, §21.702, Definitions, §21.703, Form Availability, and §21.704, Fees; repeal of §21.707, Barrier Construction Standards, and new §21.707, Barrier Construction Standards; amendments to §21.708, Prohibition Against Opening Pits; repeal of §21.710, Sloping of Pit Sidewalls, and new §21.710, Sloping of Pit Sidewalls; amendments to §21.711, Safety Certificate Required, and new §21.724, Distance Between Pit and Property Line, all concerning pit and quarry safety.

EXPLANATION OF PROPOSED AMENDMENTS

The amendments to 43 TAC Chapter 21, Subchapter M clarify the requirements for operating pits and quarries to satisfy safety requirements. A new section is added to the subchapter to incorporate the requirements of Natural Resources Code, §133.901, Distance Between Pit and Property Line.

Amendments to §21.701, Purpose and Scope, are necessary to clarify that the purpose of the subchapter is to implement the Texas Aggregate Quarry and Pit Safety Act. The amendments also remove the subsection headings to conform to the style used for the subchapter.

Amendments to §21.702, Definitions, add a new definition for "active quarry or pit," which complements the defined term "inactive quarry or pit." The new term is used in a new section relating to the distance between a quarry and adjacent property. The definition of "overburden" is amended to clarify that it includes material that must be removed to extract the aggregate being quarried. The definition of "quarry" is amended to recognize that a plant is a part of the quarry only if the aggregates are processed at the site. The amendments remove the definition of "setback distance" because the term is used only in §21.708, Prohibition Against Opening Pits. That section contains the substance of the definition and the removal of the defined term eliminates the redundancy. The amendments also make changes to "unacceptable unsafe location" to conform the definition to that contained in the statute. Definitions are renumbered accordingly.

Amendments to §21.703, Form Availability, provide that various application forms applicable to the subchapter are available at the department's Internet site. This change is made for the convenience of persons who are regulated under the subchapter.

Amendments to §21.704, Fees, provide that the payment of fees must be made by a check or money order payable to the state. This change clarifies the method of accepted payment.

Existing §21.707, Barrier Construction Standards, is repealed and new §21.707 with the same heading is added. The new section requires departmental approval of barriers that are required between public roads and pits and sets the standards that are applicable to different types of barriers. The new section provides that a barrier must be maintained so that the barrier conforms to the construction standards in effect at the time the applicable safety certificate was issued. The new section conforms the rules to the standards that are currently being used by the department and provides the flexibility that is needed to allow the adoption of technological safety advances without making additional changes to the rules.

Amendments to §21.708, Prohibition Against Opening Pits, prohibit an operator who is violating the quarry and pit safety rules at one site from opening a pit at another site and require an operator who is not the owner of the site to obtain written permission

of the property owner before opening a new pit. The purpose of the amendments is to improve safety by requiring the operator to be more accountable to the department and the property owner and providing additional tools to bring an operator into conformity with the quarry and pit safety rules and the Texas Aggregate Quarry and Pit Safety Act.

Existing §21.710, Sloping of Pit Sidewalls, is repealed and new §21.710, Sloping of Pit Sidewalls, is added. The new section revises the former rules relating to when the department will allow an operator to use sloping walls in a pit instead of placing barriers. The new section clarifies the requirements and makes them easier to understand.

Amendments to §21.711, Safety Certificate Required, clarify that the department has the duty to give written notification to the operator or land owner if an inspection indicates that a safety certificate is required.

New §21.724, Distance Between Pit and Property Line, is added to require a minimum distance of 50 feet between the edge of the consolidated material of a pit and the nearest property line that is not owned or leased by the responsible party when quarrying at the site is completed. The new section implements the requirements of Natural Resources Code, §133.901. The addition of a rule should help ensure that responsible parties are aware of the additional regulatory requirements for pits when quarrying is completed. The rule also specifies when the department will conclude that quarrying is completed at a particular quarry or pit--when the quarry or pit is no longer active as defined in the subchapter. As described earlier, the proposed rules add a definition of active quarry or pit as being a quarry or pit that has ongoing aggregate extraction activity within the preceding 180-day period. The department's experience is that quarries and pits can have long spans of time during which no activity occurs, and there is a need for clarity concerning when the requirements of Natural Resources Code, §133.901, apply.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments, repeals, and new sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Zane Webb, Director, Maintenance Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Webb has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments, repeals, and new sections will be better management of the Quarry Safety Program at no extra cost to the state. There are no additional costs for the department. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§21.701 - 21.704, §21.708, and §21.711; the repeal of §21.707 and §21.710; and new §21.707, §21.710, and §21.724 may be submitted to Zane Webb, Director, Maintenance Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on November 10, 2008.

43 TAC §§21.701 - 21.704, 21.707, 21.708, 21.710, 21.711, 21.724

STATUTORY AUTHORITY

The amendments and new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically Natural Resources Code, §133.011, which provides the commission with the authority to establish rules to implement and enforce the Texas Aggregate Quarry and Pit Safety Act (Natural Resources Code, Chapter 133).

CROSS REFERENCE TO STATUTE

Natural Resources Code, Chapter 133.

§21.701. Purpose and Scope.

(a) [~~Purpose.~~] This subchapter implements the [~~The~~] Texas Aggregate Quarry and Pit Safety Act, Natural Resources Code, Chapter 133[~~, gives the department responsibility for overseeing the identification, certification, and construction necessary to regulate public access to certain aggregate quarries and pits~~].

(b) [~~Scope.~~] This subchapter applies to all active, inactive, or abandoned quarries and pits located in whole or part within the boundaries of Texas.

§21.702. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Abandoned--Having relinquished all right, title, claim, and possession with the intent of never again claiming a future right or title or resuming possession.

(2) Act--The Texas Aggregate Quarry and Pit Safety Act, Natural Resources Code, Chapter 133, and this subchapter.

(3) Active quarry or pit--A quarry or pit that has ongoing aggregate extraction activity or that shows evidence of aggregate extraction activity within the preceding 180-day period whether or not equipment or a plant is at the site.

(4) [~~(3)~~] Aggregates--Any commonly recognized construction material originating from a quarry or pit by the disturbance of the surface, including dirt, soil, rock asphalt, clay, granite, gravel, gypsum, marble, sand, shale, stone, caliche, limestone, dolomite, rock, riprap, or other similar substance.

(5) [~~(4)~~] Barrier--An object of substantial construction that will obstruct, restrain, and prevent the normal passage of persons or vehicular traffic.

(6) [~~(5)~~] Berm--A ridge of refuse, overburden, or other material in a lengthened elevation designed to act as a dike or barrier, capable of moderating or limiting the force of a vehicle in order to impede the passage of the vehicle.

(7) [~~(6)~~] Commission--Texas Transportation Commission.

(8) [~~(7)~~] Department--Texas Department of Transportation.

(9) [~~(8)~~] Director--The director of the Maintenance Division of the department, or the director's designee.

(10) [~~(9)~~] Division--The Maintenance Division of the department.

(11) [~~(10)~~] In hazardous proximity to a public road--That distance beginning 200 feet from the outer edge of a roadway to the pit perimeter.

(12) [~~(11)~~] Inactive quarry or pit--A site that includes an industrial aggregate extraction plant or any portion of a site that includes an industrial aggregate extraction plant, that although previously in aggregate production, is not currently being quarried by any ownership, lease, joint venturer, or some other legal arrangement.

(13) [~~(12)~~] Operator--Any person, partnership, firm, or corporation engaged in and responsible for the physical operation and control of the extraction of aggregates.

(14) [~~(13)~~] Overburden--All materials displaced in an aggregate extraction operation that are not or reasonably would not be expected to be removed from the affected area. The term includes the material that must be removed to access the aggregate that is to be extracted.

(15) [~~(14)~~] Owner--Any person, partnership, firm, or corporation having title, in whole or in part, to the land on which an aggregate operation exists or has existed.

(16) [~~(15)~~] Pit--An open excavation not less than five feet below the adjacent and natural ground level from which aggregates have been or are being extracted.

(17) [~~(16)~~] Public road or right of way--Every way publicly maintained or any part thereof as defined by Transportation Code, §541.302, and the decisions thereunder.

(18) [~~(17)~~] Quarry--A site where aggregates are being or have been removed or extracted from the earth to form a pit, including the entire excavation, stripped areas, haulage ramps, the land immediately adjacent thereto upon which a plant if required for processing the raw materials is located, exclusive of any land owned or leased by the responsible party that is not being currently used in the production of aggregates.

(19) [~~(18)~~] Quarrying--The current and ongoing surface excavation and development without shafts, drafts, or tunnels, with or without slopes, for the extraction of aggregates from natural deposits occurring in the earth.

(20) [~~(19)~~] Refuse--All waste material directly connected with the production, cleaning, or preparation of aggregates that have been produced by quarrying.

(21) [~~(20)~~] Responsible party--The current operator of the quarry or pit, or if no operator exists, the owner of the land in which the pit exists.

(22) [~~(21)~~] Ridge--A lengthened elevation of overburden created in the aggregate production process.

(23) [~~(22)~~] Roadway--The part of the public road intended for normal vehicular traffic that consists of an improved driving surface constructed of concrete, asphalt, compacted soil, rock, or other material.

[~~(23) Setback distance--Distance from the outer right-of-way line of a public road or highway up to a distance of 25 feet.~~]

(24) Site--The tract of land on which a pit is located, including the immediate area on which the plant used in the extraction of aggregates is located.

(25) Unacceptable unsafe location--A condition where the edge of a pit is located within 200 feet of a public roadway intersection in a manner that the department determines:

(A) presents a significant risk of harm to motorists by reason of the proximity of the pit to the roadway intersection and[~~;~~]

[~~(B)~~] has no naturally occurring or artificially constructed barrier or berm between the road and pit that would likely prevent a motor vehicle from entering the pit as the result of a motor vehicle collision at or near the intersection;

[~~(C) is within 200 feet of the edge of a roadway;~~] or

(B) [~~(D) in the opinion of the department,~~] is at any other location constituting a substantial dangerous risk to the driving public, which condition can be rectified by the placement of berms, barriers, guardrails, or other devices as required by this subchapter.

§21.703. Form Availability.

(a) Forms for the application for a safety certificate, transfer of a safety certificate, safety certificate waiver, and for the notice of cessation of operations are available at the offices of the department or by accessing the Texas Department of Transportation web site at www.txdot.gov and searching on the word "pit".

(b) Forms are also available by writing to the Director, Maintenance Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483.

§21.704. Fees.

Each application for a safety certificate or transfer of a safety certificate and each notice of cessation of operations shall be accompanied by check or money order made payable to the State of Texas for the application fee [~~a fee~~]. The fee schedule is as follows:

(1) safety certificate application for a non-governmental entity--$500;

(2) safety certificate transfer--$250;

(3) notice of cessation of operations--$500;

(4) governmental entity application for inactive or abandoned pit safety certificate--$350.

§21.707. Barrier Construction Standards.

(a) A barrier required under §21.706 of this subchapter must be determined by the department to be sufficient to prevent the normal passage of vehicular traffic from entering the site of the pit.

(b) The design of the barrier must be approved by the department to insure proper performance.

(c) The barrier may be a guardrail, concrete barrier, or berm barrier. A guardrail must meet the current department specification and standard detail for metal beam guard fence. A concrete barrier must meet the current department specifications and standards for a rigid barrier and the appropriate standards for end treatments, attenuators, and crash cushion. A berm barrier must meet the current department specifications and standards for berm barriers.

(d) A barrier that was determined to conform to construction standards for the issuance of a safety certificate and that has deteriorated so that it no longer meets the construction standards applicable at the time the safety certificate was issued will be required to be improved to conform to those standards.

§21.708. Prohibition Against Opening Pits.

(a) No responsible party may open a new pit on a site for the extraction of aggregates if the pit perimeter will be less than 25 feet from the outer right of way line of any public road or highway ("the setback distance").

(b) No responsible party may open a new pit on a site for the extraction of aggregates in this state if the pit perimeter is in hazardous proximity to a public road without first filing a quarry safety plan and receiving a safety certificate.

(c) No operator may open a new pit on a site for the extraction of aggregates if the operator is in violation of the rules under this subchapter at another site.

(d) An operator who is not the owner of the site may not open a new pit on the site without the written permission of the owner.

§21.710. Sloping of Pit Sidewalls.

The department will determine if potential holding or impounding of water in a pit will create a hazard to the motoring public requiring a barrier to be constructed. The department may allow a slope of not more than 30 degrees to be built on the side wall or walls adjacent to the public road in lieu of the barrier if the water does not pose a hazard to the motoring public.

§21.711. Safety Certificate Required.

(a) A safety certificate is required for an active, inactive, or abandoned quarry or pit that is located in hazardous proximity to a public road or is in an unacceptable unsafe location, excluding an inactive or abandoned quarry or pit that receives a written barrier waiver from the department.

(b) Except as provided in subsection (c) of this section, a responsible party must obtain a safety certificate prior to:

(1) opening a new pit in hazardous proximity to a public road and in an unacceptable unsafe location; or

(2) reopening, operating, or abandoning a quarry or pit that is in hazardous proximity to a public road and in an unacceptable unsafe location.

(c) The department will notify the responsible party in writing if after inspection the department finds that a safety certificate is required for the pit or quarry. A responsible party is not required to obtain a safety certificate to operate or maintain an existing quarry or pit unless the department has notified the responsible party in writing that it must do so.

(d) Any responsible party who is utilizing a portion of a site for quarrying operations, including the stockpiling, sale, or processing of aggregates or a combination thereof, or who has a current, valid, or outstanding agreement or legal right to develop, utilize, or quarry the property, shall be responsible for obtaining a safety certificate limited to that specific pit area he is using or excavating or intends to use or excavate.

(e) Any responsible party may operate the pit during a period that is described in §21.717 of this subchapter (relating to Recertification After Transfer of Title).

§21.724. Distance Between Pit and Property Line.

(a) Quarrying is considered completed when a quarry or pit is no longer an active quarry or pit under this subchapter. At the time quarrying is completed, the distance from the edge of the consolidated material of a pit that does not have lateral support to the property line of the nearest property that is not owned or leased by the operator may not be less than 50 feet.

(b) This section does not apply:

(1) to a pit if the operator and the adjacent property owner agree that the pit may be located closer to the property line;

(2) to an excavation constructed by political subdivision to provide drainage or storm water retention; or

(3) to a county with a population of 3.3 million or more.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

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43 TAC §21.707, §21.710

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Transportation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically Natural Resources Code, §133.011, which provides the commission with the authority to establish rules to implement and enforce the Texas Aggregate Quarry and Pit Safety Act (Natural Resources Code, Chapter 133).

CROSS REFERENCE TO STATUTE

Natural Resources Code, Chapter 133.

§21.707. Barrier Construction Standards.

§21.710. Sloping of Pit Sidewalls.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 3. CRIMINAL JUSTICE DIVISION
SUBCHAPTER J. STATE PLANNING ASSISTANCE GRANTS

1 TAC §§3.9400, 3.9405, 3.9410, 3.9415, 3.9420, 3.9425, 3.9430, 3.9435

The Office of the Governor adopts the addition of Title 1, Part 1, Chapter 3, Subchapter J (State Planning Assistance Grants), which includes §§3.9400, 3.9405, 3.9410, 3.9415, 3.9420, 3.9425, 3.9430, and 3.9435, without changes to the proposal as published in August 29, 2008, issue of the *Texas Register* (33 TexReg 7107).

The Office of the Governor has designated its Criminal Justice Division (CJD) as the division of the Office of the Governor that will administer State Planning Assistance Grants (SPAG). To reflect this designation, the Office of the Governor moves the administrative rules regarding SPAG from Chapter 5 (the chapter relating to the Budget and Planning Office) to Chapter 3 (the chapter relating to CJD).

The addition of §§3.9400, 3.9405, 3.9410, 3.9415, 3.9420, 3.9425, 3.9430, and 3.9435 is intended to conform the rules to the requirements of the applicable statutes, satisfy recommendations made by State Auditor's Office in its Review of Regional Planning Commissions' Financial and Performance Reports (SAO Report No. 03-013; Released 12/30/02), improve the accountability of COGs in the use of state and federal funds, assist in promoting more effective oversight of COGs, and improve COG reporting requirements.

The addition of §3.9400 adds the definitions previously found in §5.81, and deletes from the original language of the section the definitions that are already defined in Chapter 3 and the definitions of terms no longer included in the rules.

The addition of §3.9405 adds the general regulations previously found in §5.82 and the lobbying requirements previously found in §5.89. The addition also removes the provision regarding local government participation in a COG, which is no longer needed in the rules; allows CJD to establish application deadlines to improve the funding process for SPAG; allows CJD to use more up-to-date census data when determining the proper distribution of SPAG; and requires COGs to comply with the statutes governing COGs and any other applicable statutes, rules, regulations and guidelines.

The addition of §3.9410 adds the financial audit requirements previously found in §5.83. The addition also conforms the language of this section to the requirements of §391.0095, Local Government Code, by requiring a COG to submit copies of its annual financial report to CJD, the State Auditor, the Comptroller of Public Accounts, and the Legislative Budget Board and make the annual financial audit available to each member of the Legislature; allowing the Office of the Governor to request the State Auditor or an external auditor to review a COG's annual financial audit; requiring the State Auditor to report any findings and recommendations to the Legislative Audit Committee, CJD and the COG; and clarifying that an annual financial audit must be paid for from COG funds. In addition, the addition specifies which auditing standards are applicable to financial audits.

The addition of §3.9415 simplifies the requirements for the SPAG application previously found in §5.84 by allowing CJD to prescribe the format for the SPAG application and make a grant award after receipt and approval of the SPAG application.

The addition of §3.9420 adds the requirements for salary schedules previously found in §5.85. The addition conforms the language of this section to the requirements of §391.0117, Local Government Code, by requiring a COG to submit its salary schedule to the State Auditor and make its salary schedule available to each member of the Legislature; and clarifying the responsibilities of CJD and the State Auditor regarding a COG's salary schedule.

The addition of §3.9425 adds the restrictions on COG costs previously found in §5.86 and removes the definition provisions regarding the limit on the amount of total expenditure that may be spent on indirect costs. The limit on the amount of total expenditure that may be spent on indirect costs is still applicable to COGs pursuant to §391.0115.

The addition of §3.9430 adds the requirements for reports previously found in §5.87 and annual work programs previously found in §5.90. The addition updates the language of this section to conform it to the requirements of §391.0095, Local Government Code, by requiring a COG to submit its reports to CJD, the State Auditor, the Comptroller of Public Accounts, and the Legislative Budget Board. The addition also specifies the types of information that must be included in certain COG reports.

The addition of §3.9435 adds the sanctions provisions previously found in §5.88; clarifies that sanctions may be applied for a failure to submit a report or audit required under any provision in Subchapter J; and defines the roles of CJD and the State Auditor in the sanction process.

No comments were received regarding the addition of these rules.

The addition of §§3.9400, 3.9405, 3.9410, 3.9415, 3.9420, 3.9425, 3.9430, and 3.9435 is adopted under §391.009, Local Government Code, which provides the Office of the Governor with the authority to adopt rules regarding the operation and oversight of COGs, the receipt and expenditure of funds by

COGs, the annual reporting requirements of COGs, the audit requirements on funds received or expended by COGs, the establishment and the use of standards by which the productivity and performance of COGs can be evaluated, and the guidelines that COGs and governmental units must follow in carrying out the review and comment procedures for loans and grants-in-aid.

The addition of §§3.9400, 3.9410, 3.9430, and 3.9435 implements §391.0095, Local Government Code, regarding reporting and audit requirements.

The addition of §3.9405 and §3.9415 implements §391.012, Local Government Code, regarding state financial assistance.

The addition of §3.9420 implements §391.0095, Local Government Code, regarding reporting and audit requirements and §391.0117, Local Government Code, regarding salary schedules.

No other statutes, articles, or codes are affected by the addition of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 29, 2008.

TRD-200805257
David Zimmerman
Assistant General Counsel
Office of the Governor
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Proposal publication date: August 29, 2008
For further information, please call: (512) 936-0181

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CHAPTER 5. BUDGET AND PLANNING OFFICE

SUBCHAPTER A. FEDERAL AND INTERGOVERNMENTAL COORDINATION

DIVISION 3. STATE PLANNING ASSISTANCE GRANTS

1 TAC §§5.81 - 5.90

The Office of the Governor adopts the repeal of Title 1, Part 1, Chapter 5, Subchapter A, Division 3 (State Planning Assistance Grants), which includes §§5.81 - 5.90, without changes to the proposal as published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7110).

The Office of the Governor has designated its Criminal Justice Division (CJD) as the division of the Office of the Governor that will administer State Planning Assistance Grants (SPAG). To reflect this designation, the Office of the Governor moves the administrative rules regarding SPAG from Chapter 5 (the chapter relating to the Budget and Planning Office) to Chapter 3 (the chapter relating to CJD).

No comments were received regarding the adoption of the repeal of these rules.

The repeal of §§5.81 - 5.90 is adopted under §391.009, Local Government Code, which provides the Office of the Governor with the authority to adopt rules regarding the operation and oversight of Councils of Government (COGs), the receipt and expenditure of funds by COGs, the annual reporting requirements of COGs, the audit requirements on funds received or expended by COGs, the establishment and the use of standards by which the productivity and performance of COGs can be evaluated, and the guidelines that COGs and governmental units must follow in carrying out the review and comment procedures for loans and grants-in-aid.

No other statutes, articles, or codes are affected by the repeal of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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David Zimmerman
Assistant General Counsel
Office of the Governor
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Proposal publication date: August 29, 2008
For further information, please call: (512) 936-0181

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING DIAGNOSTIC ASSESSMENT

19 TAC §101.6001

The Texas Education Agency (TEA) adopts new §101.6001, concerning the Texas middle school diagnostic reading assessment. The new section is adopted without changes to the proposed text as published in the July 18, 2008, issue of the *Texas Register* (33 TexReg 5634) and will not be republished. The adopted new rule implements the requirement of the Texas Education Code (TEC), §28.006(c-1), which requires each school district to administer at the beginning of the seventh grade a reading instrument to each student whose performance on the assessment instrument in reading in Grade 6 did not demonstrate reading proficiency.

In 1999, the 76th Texas Legislature enacted the Student Success Initiative, which established grade advancement requirements based on student performance on statewide assessments in reading and/or mathematics in Grades 3, 5, and 8. In 2007, the 80th Texas Legislature passed legislation that would address the academic performance differences of elementary students and students in Grades 6-8 on the state reading assessments. In addition, Grade 8 students were subject to the grade advancement requirements of the Student Success Initiative beginning with school year 2007-2008.

The 80th Texas Legislature, through House Bill (HB) 2237, provided for the statewide implementation of a reading assessment to be administered at the beginning of Grade 7 to students who did not demonstrate reading proficiency, as determined by the

commissioner, on the Grade 6 state assessment in reading. The results of the assessment will provide diagnostic information that school districts can use to offer reading intervention to these students based on their specific needs. A school district shall provide additional reading instruction and intervention to each student in Grade 7 assessed under the adopted new rule, as appropriate to improve the student's reading skills in the relevant areas identified through the assessment instrument.

Adopted new 19 TAC §101.6001 establishes provisions for middle school diagnostic reading assessment, including designating the diagnostic reading instrument to be used for identified students and providing criteria for alternative diagnostic reading instruments.

To comply with the adopted new rule, school districts will administer the Texas Middle School Fluency Assessment and/or a TEA-approved alternate research-based, diagnostic reading instrument. A school district that chooses to administer an alternate diagnostic reading instrument will be required to request prior approval from the TEA by submitting an explanation of how the alternate instrument meets specified criteria along with appropriate evidence.

The TEA determined that the adopted new section will have no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began July 18, 2008, and ended August 18, 2008. No public comments were received.

The new section is adopted under the TEC, §28.006(c-1), added by HB 2237, 80th Texas Legislature, 2007, which authorizes the commissioner to adopt a reading instrument to administer at the beginning of the seventh grade to each student whose performance on the assessment instrument in reading in grade six did not demonstrate reading proficiency.

The new section implements the TEC, §28.006(c-1) and (g-1).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 24, 2008.

TRD-200805156
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: October 14, 2008
Proposal publication date: July 18, 2008
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.7

The Texas Board of Nursing (Board) adopts an amendment to §211.7, concerning Executive Director, without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6271) and will not be republished.

The amendment outlines the Board's current policies that delegate authority to the Executive Director.

The Board by policy has authorized the Executive Director to offer proposed disciplinary orders upon evaluation of the investigation findings. The Executive Director may make these offers by mail at the conclusion of an investigation; or in person following an informal conference. Similarly, the Executive Director is authorized by Board policy to accept the voluntary surrender of a license and Board ratification is not required. The Executive Director is authorized to accept and enter the several types of agreed orders on behalf of the Board and ratification by the Board is not necessary.

The amendment includes delegated authority to enter board orders for remedial education and fine for violations including practice on a delinquent license; aiding, abetting or permitting a nurse to practice on a delinquent license; failure to comply with CE requirements; failure to comply with mandatory reporting requirements; failure to assure licensure/credentials of personnel for whom the nurse is administratively responsible; failure to provide employers, potential employers or the Board with complete and accurate answers to specific questions regarding employment or background (e.g., presenting incomplete employment history); failure to report unauthorized practice; failure to comply with Board requirements for change of name/address; failure to develop, maintain and implement a peer review plan according to statutory peer review requirements; failure to file, or cause to be filed, complete, accurate and timely reports required by Board Order; and failure to make complete and timely compliance with the terms of any stipulation contained in a Board Order. Additionally, the Executive Director may enter Orders requiring a licensee to comply with a peer assistance program and may also grant certain motion for rehearings on default orders. The Executive Director is to report summaries of dispositions to the Board at its regular meetings.

No comments were received regarding adoption of the rule.

The amendment is adopted pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 29, 2008.

TRD-200805248
James W. Johnston
General Counsel
Texas Board of Nursing
Effective date: October 19, 2008
Proposal publication date: August 8, 2008
For further information, please call: (512) 305-6811

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CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §§214.1 - 214.13

The Texas Board of Nursing (Board) adopts amendments to §§214.1 - 214.13, concerning Vocational Nursing Education. Sections 214.2 - 214.4 and 214.7 are adopted with minor grammatical changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6273) and will be republished. Sections 214.1, 214.5, 214.6, and 214.8 - 214.13 are adopted without changes and will not be republished.

Elsewhere in this issue of the *Texas Register,* the Board is contemporaneously adopting amendments to §§215.1 - 215.13, concerning Professional Nursing Education.

At the July 2006 Board meeting, the Board issued a charge to the Advisory Committee on Education (ACE) to review rule language regarding clarity and consistency between Chapter 214 and Chapter 215. ACE addressed this charge during the June 13, 2008, meeting in Austin and continued the process during the June 24, 2008, telephonic conference. The amendments to Chapter 214 are as follows:

Section 214.1, General Requirements - addition of language provides clarity for the intent of the rule and matches wording in the statute;

Section 214.2, Definitions - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 214.3, Program Development, Expansion and Closure - addition, clarification, deletion and revision of language provide clarity for the intent of the rules, demonstrate consistency between the rules, and describe the processes that actually occur and are outlined in Board guidelines;

Section 214.4, Approval - addition, clarification, deletion, reorganization and revision of language provide clarity for the intent of the rules, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 214.5, Philosophy/Mission and Objectives/Outcomes - addition and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and match wording in the statute;

Section 214.6, Administration and Organization - addition, reorganization, and revision of language provide clarity for the intent of the rule, consistency between the rules, and describe the processes that actually occur;

Section 214.7, Faculty - addition, deletion, revision, rephrasing, and reorganization of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 214.8, Students - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 214.9, Program of Study - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 214.10, Clinical Learning Experiences - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 214.11, Facilities, Resources and Services - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 214.12, Records and Reports - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur; and

Section 214.13, Total Program Evaluation - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur.

Additional non-substantive changes were made throughout Chapter 214 for the purposes of correcting spelling/grammatical errors and providing correct numbering of items.

No comments were received regarding adoption of the rules.

The amendments are adopted pursuant to the authority of Texas Occupations Code §301.157 and §301.151 which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

§214.2. Definitions.

Words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) Accredited nursing educational program--a vocational nursing educational program having voluntary accreditation by a Board-approved national nursing accrediting body.

(2) Affidavit of Graduation--an official Board form containing an approved nursing educational program's curriculum components and hours, a statement attesting to an applicant's qualifications for vocational nurse licensure in Texas and the signature of the nursing program director/coordinator.

(3) Affiliating agency or clinical facility--a health care facility or agency which provides learning experiences for students.

(4) Alternative practice settings--settings which provide opportunities for clinical learning experiences although their primary function is not the delivery of health care.

(5) Approved vocational nursing educational program--a vocational nursing educational program approved by the Texas Board of Nursing.

(6) Articulation--a planned process between two or more educational systems to assist students to make a smooth transition from one level of education to another without duplication in learning.

(7) Board--the Texas Board of Nursing composed of members appointed by the Governor for the State of Texas.

(8) Career school or college--see paragraph (35) of this section (relating to Proprietary school)--educational entity defined in Title 3, Texas Education Code, §132.0015 as "career school or college."

(9) Class hours--those hours allocated to didactic instruction and testing in each subject.

(10) Clinical learning experiences--faculty-planned and guided learning activities designed to assist students to meet stated program and course outcomes and to safely apply knowledge and skills

when providing nursing care to clients across the life span as appropriate to the role expectations of the graduates. These experiences occur in actual patient care clinical learning situations, nursing skills and computer laboratories, in simulated clinical settings, in a variety of affiliating agencies or clinical practice settings including, but not limited to: acute care facilities, extended care facilities, clients' residences, and community agencies; and in associated clinical conferences.

(11) Clinical practice hours--hours spent in actual client care assignments, simulated laboratory experiences, observations, clinical conferences and clinical instruction.

(12) Clinical preceptor--a licensed nurse who meets the minimum requirements in §214.10(i)(6) of this chapter (relating to Clinical Learning Experiences), not employed as a faculty member by the controlling agency/governing institution, and who directly supervises clinical learning experiences for no more than two students. A clinical preceptor facilitates student learning in a manner prescribed by a signed written agreement between the educational institution, preceptor, and affiliating agency (as applicable).

(13) Compliance Audit--a document required by the Board to be submitted at a specified time by the nursing educational program director/coordinator that serves as verification of the program's adherence to this chapter.

(14) Conceptual framework--theories or concepts giving structure to the curriculum and enabling faculty to make consistent decisions about curriculum development, implementation, and evaluation.

(15) Controlling agency--institution that has direct authority and administrative responsibility for the operation of a board approved nursing educational program.

(16) Correlated theory and clinical practice--didactic and clinical experiences which have a reciprocal relationship or mutually complement each other.

(17) Course--organized subject content and related activities, which may include didactic, laboratory and/or clinical experiences, planned to achieve specific objectives within a given time period.

(18) Curriculum--course offerings which, in aggregate, make up the total learning activities in a program of study.

(19) Differentiated Entry Level Competencies (DELC)--the expected educational outcomes to be demonstrated by nursing students at the time of graduation as published in *Differentiated Entry Level Competencies of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/ADN), Baccalaureate (BSN), September 2002* (DELC).

(20) Director/coordinator--a registered nurse who is accountable for administering a pre-licensure nursing educational program, who meets the requirements as stated in §214.6(f) of this chapter (relating to Administration and Organization), and is approved by the Board.

(21) Examination year--the period beginning January 1 and ending December 31 used for the purposes of determining programs' NCLEX-PN® examination pass rates.

(22) Extension program/campus--instruction provided by an approved vocational nursing educational program through a variety of instructional methods to any location(s) other than the program's main campus and where students are required to attend activities such as testing, group conferences, and/or campus laboratory. An extension program may offer the entire identical curriculum or may offer a single course or multiple courses.

(23) Faculty member--an individual employed to teach in the vocational nursing educational program who meets the requirements as stated in §214.7 of this chapter (relating to Faculty).

(24) Faculty waiver--a waiver granted by a director or coordinator of a vocational nursing educational program and submitted to the Board on a notarized notification form, or by the Board, as specified in §214.7(d)(1) of this chapter, to an individual who is currently licensed as an LVN or RN, or has a privilege to practice in Texas and who is approved to be employed as a faculty member which is valid for up to one year.

(25) Governing institution--the entity with administrative and operational authority over a Board-approved vocational nursing educational program.

(26) Health care professional--an individual other than a licensed nurse who holds at least a bachelor's degree in the health care field, including, but not limited to: respiratory therapists, physical therapists, occupational therapists, dieticians, pharmacists, physicians, social workers and psychologists.

(27) MEEP--a Multiple Entry-Exit Program which allows students to challenge the NCLEX-PN® examination when they have completed sufficient course work in a professional nursing educational program that will meet all requirements as outlined in Chapter 213 of this title (relating to Practice and Procedure).

(28) Mobility--the ability to advance without educational barriers.

(29) Non-nursing faculty--instructors who teach non-nursing content such as pharmacology, pathophysiology, anatomy and physiology, growth and development, and nutrition, and who have educational preparation appropriate to the assigned teaching responsibilities.

(30) Objectives/Outcomes--clear statements of expected behaviors that are attainable and measurable.

(A) Program Objectives/Outcomes--broad statements used to direct overall student learning to meet achievement of expectations upon graduation.

(B) Clinical Objectives/Outcomes--statements describing expected student behaviors throughout the curriculum and which represent progression of students' cognitive, affective and psychomotor achievement in clinical practice across the curriculum.

(C) Course Objectives/Outcomes--statements describing expected behavioral changes in the learner upon successful completion of specific curriculum content and which serve as the mechanism for evaluation of student progression.

(31) Observational experience--an assignment to a facility or unit where students observe activities within the facility and/or the role of nursing within the facility, but where students do not participate in patient/client care.

(32) Pass rate--the percentage of first-time candidates within one examination year who pass the National Council Licensure Examination for Vocational Nurses (NCLEX-PN®).

(33) Philosophy/Mission--statement of concepts expressing fundamental values and beliefs regarding human nature as they apply to nursing education and practice and upon which the curriculum is based.

(34) Program of Study--the courses and learning experiences that constitute the requirements for completion of a vocational nursing educational program.

(35) Proprietary school--educational entity defined in Title 3, Texas Education Code, §132.0015 as "career school or college."

(36) Recommendation--a specific suggestion based upon program assessment indirectly related to the rules to which the program must respond but in a method of their choosing.

(37) Requirement--mandatory criterion based on program assessment directly related to the rule that must be addressed in the manner prescribed.

(38) Shall--denotes mandatory requirements.

(39) Staff--employees of the Texas Board of Nursing.

(40) Supervision--immediate availability of a faculty member or clinical preceptor to coordinate, direct, and observe first hand the practice of students.

(41) Survey visit--an on-site visit to a vocational nursing educational program by a Board representative. The purpose of the visit is to evaluate the program of learning by gathering data to determine whether the program is meeting the Board's requirements as specified in §§214.2 - 214.13 of this chapter.

(42) Systematic approach--the organized process in nursing that provides individualized, goal-directed nursing care that includes the vocational nurse's role in participating in data collection, assessment activities, planning and implementing client care, and evaluating the client's responses to nursing interventions and identification of client needs.

(43) Texas Higher Education Coordinating Board (THECB)--a state agency created by the Legislature to provide coordination for the Texas higher education system, institutions, and governing boards, through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants (Texas Education Code, Title 3, Subtitle B, Chapter 61).

(44) Texas Workforce Commission (TWC)--the state agency charged with overseeing and providing workforce development services to employers and job seekers of Texas (Texas Labor Code, Title 4, Subtitle B, Chapter 301).

(45) Vocational Nursing Educational Program--an educational unit within the structure of a school, including a college, university, or proprietary school (career school or college); and a program conducted by a hospital that provides a program of study preparing graduates who are competent to take the NCLEX-PN® examination.

§214.3. Program Development, Expansion and Closure.

(a) New programs.

(1) New nursing educational programs must be approved by the Texas Board of Nursing in order to operate in the State of Texas. The Texas Board of Nursing has established guidelines for the initial approval of schools of nursing or educational programs.

(2) Proposal to establish a new vocational nursing educational program.

(A) An educational unit in nursing within the structure of a school, including a college, university, or proprietary school (career school or college), or a hospital is eligible to submit a proposal to establish a vocational nursing educational program. Specialized institutions such as nursing homes, tuberculosis hospitals, and others do not qualify as controlling agencies, but may participate with a program as an affiliating health care facility.

(B) The new vocational nursing educational program must be approved/licensed or deemed exempt by the appropriate Texas agency, Texas Workforce Commission (TWC), Texas Higher Education Coordinating Board (THECB), before approval can be granted by the Texas Board of Nursing for the program to be implemented. The proposal to establish a new vocational nursing educational program may be submitted to the Board at the same time that an application is submitted to THECB or TWC, but the proposal cannot be approved by the Board until such time as the proposed program is approved by THECB or TWC.

(C) The process to establish a new vocational nursing educational program shall be initiated with the Board office one year prior to the anticipated start of the program.

(D) The individual actually writing the proposal for a new nursing educational program does not have to be a registered nurse or hold a Texas license or a privilege to practice nursing in Texas.

(i) The name and credentials of the author of the proposal must be included in the document.

(ii) At some point, and at least prior to the presentation of the proposal to the Board, an individual must be identified as the prospective director and this individual must meet the rule requirements in §214.6 of this chapter (relating to Administration and Organization) to be a program director.

(iii) The prospective program director must review/revise the proposal and agree with the components of the proposal as being representative of the proposed program that the individual will be responsible for administratively.

(E) Prior to presentation of the proposal to the Board for approval, a minimum of a prospective director and at least one prospective nursing faculty member must be identified and these individuals must review/revise and approve the curriculum that is included with the proposal.

(F) The proposal shall include information outlined in Board guidelines.

(G) After the proposal is submitted and reviewed, a preliminary survey visit shall be conducted by Board staff prior to presentation to the Board.

(H) The proposal shall be considered by the Board following a public hearing at a regularly scheduled meeting of the Board. The Board may approve the proposal and grant initial approval to the new program, may defer action on the proposal, or may deny further consideration of the proposal.

(I) The program shall not admit students until the Board approves the proposal and grants initial approval.

(J) Prior to presentation of the proposal to the Board, evidence of approval from the appropriate regulatory/funding agencies shall be provided.

(K) When the proposal is submitted, an initial approval fee shall be assessed per §223.1 of this title (relating to Fees).

(L) A proposal without action for one calendar year shall be inactivated.

(M) If the Board denies further consideration of a proposal, the educational unit in nursing within the structure of a school, including a college, university, or proprietary school (career school or college), or a hospital must wait a minimum of twelve calendar months

from the date of the denial before submitting a new proposal to establish a vocational nursing educational program.

(3) Survey visits shall be conducted, as necessary, by staff until full approval status is granted.

(b) Extension Program/Campus.

(1) Only vocational nursing educational programs which have full approval status are eligible to initiate or modify an extension program/campus.

(2) Instruction provided for the extension program/campus may include a variety of instructional methods, shall be congruent with the program's curriculum plan, and shall enable students to meet the goals, objectives, and competencies of the educational program and requirements of the Board as stated in §§214.2 - 214.13 of this chapter (relating to Vocational Nursing Education).

(3) An approved vocational nursing educational program desiring to establish an extension program/campus that duplicates the main program's/campus' current curriculum and teaching resources shall:

(A) Notify the Board office at least four (4) months prior to implementation of the extension program;

(B) Submit required information according to Board guidelines; and

(C) Provide documentation to the Board of notification or approval from the controlling agency/governing institution, THECB, TWC and/or other regulatory/funding agencies, as applicable, at least four (4) months prior to implementation, as appropriate.

(4) When the curriculum of the extension program/campus deviates from the original program in any way, the proposed extension is viewed as a new program and Board guidelines for a new program apply.

(5) Extension programs of vocational nursing educational programs which have been closed may be reactivated by submitting notification of reactivation to the Board at least four (4) months prior to reactivation, using the Board guidelines for initiating an extension program.

(6) A program intending to close an extension program shall:

(A) Notify the Board office at least four (4) months prior to closure of the extension program.

(B) Submit required information according to Board-approved guidelines including:

(i) reason for closing the program;

(ii) date of intended closure;

(iii) academic provisions for students; and

(iv) provisions made for access to and storage of vital school records.

(7) Consolidation. When a controlling agency/governing institution oversees an extension program/campus or multiple extension programs/campuses with curricula identical to the curriculum of the main program/campus, the controlling agency/governing institution and the program director may request consolidation of the extension program(s)/campus(es) with the main program utilizing one NCLEX-PN® examination testing code.

(A) The request to consolidate the extension program(s)/campus(es) with the main program shall be submitted in the form of a formal letter to the Board office at least four (4) months prior to the effective date of consolidation addressing the required information as outlined in Board guidelines.

(B) The notification of the consolidation will be presented, as information only, to the Board at a regularly scheduled Board meeting as no Board action is required.

(C) The program will receive an official letter of acknowledgment following the Board meeting.

(D) After the effective date of consolidation, the NCLEX-PN® examination testing code(s) for the extension program(s) will be deactivated/closed.

(E) The NCLEX-PN® examination testing code assigned to the main program will remain active.

(c) Transfer of Controlling Agency/Governing Institution. The authorities of the controlling agency/governing institution shall notify the Board office in writing of an intent to transfer the administrative authority of the program. This notification shall follow Board guidelines.

(d) Closing a Program. A program shall notify the Board office in writing of their intent to close the program.

(1) When the decision to close a program which provides the entire program of study has been made, the director must notify the Board and submit a written plan for closure which includes the following:

(A) reason for closing the program;

(B) date of intended closure;

(C) academic provisions for students to complete the nursing educational program and teach-out arrangements have been approved by the appropriate Texas agency, (i.e., TWC, THECB, Texas Board of Nursing);

(D) provisions made for access to and safe storage of vital school records, including transcripts of all graduates; and

(E) methods to be used to maintain requirements and standards until the program closes.

(2) The program shall continue within standards until all students, enrolled in the nursing educational program at the time of the decision to close, have graduated. In the event this is not possible, a plan shall be developed whereby students may transfer to other approved programs.

(3) A program is deemed closed when the program has not enrolled students for a period of two years since the last graduating class or student enrollment has not occurred for a two-year period. Board-ordered enrollment suspensions may be an exception.

(e) Approval of a Nursing Educational Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

(1) The nursing educational program outside Texas' jurisdiction seeking approval to conduct clinical learning experiences in Texas should initiate the process with the Texas Board of Nursing two to three months prior to the anticipated start of the clinical learning experiences in Texas.

(2) A written request and the required supporting documentation shall be submitted to the Board office following Board guidelines.

(3) Evidence that the program has been approved/licensed or deemed exempt from approval/licensure by the appropriate Texas agency, (i.e., THECB, TWC), to conduct business in the State of Texas, must be obtained before approval can be granted by the Texas Board of Nursing for the program to conduct clinical learning experiences in Texas.

§214.4. Approval.

(a) The progressive designation of approval status is not implied by the order of the following listing. Approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and response to the Board's recommendations. Change from one status to another is based on NCLEX-PN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section. Types of approval include:

(1) Initial Approval.

(A) Initial approval is written authorization by the Board for a new program to admit students, is granted if the program meets the requirements and addresses the recommendations issued by the Board, and begins with the date of the first student enrollment.

(B) Student enrollment is determined by the Board and the specifics are included in the Board's initial approval letter.

(C) Change from initial approval status to full approval status cannot occur until the program has met requirements and responded to all recommendations issued by the Board and the licensing examination result of the first graduating class is evaluated by the Board.

(2) Full Approval.

(A) Full Approval is granted by the Board to a vocational nursing educational program that is in compliance with all requirements and has responded to all recommendations.

(B) Only programs with full approval status may initiate extension programs, grant faculty waivers, and petition for faculty waivers.

(3) Full approval with warning is issued by the Board to a vocational nursing educational program that is not meeting legal and educational requirements.

(A) A program issued a warning will receive written notification from the Board of the warning.

(B) The program is given a list of the deficiencies and a specified time in which to correct the deficiencies.

(4) Conditional Approval. Conditional approval is issued by the Board for a specified time to provide the program opportunity to correct deficiencies.

(A) The program shall not admit students while on conditional status.

(B) The Board may establish specific criteria to be met in order for the program's conditional approval status to be changed.

(C) Depending upon the degree to which the Board's legal and educational requirements are met, the Board may change the approval status to full approval or full approval with warning, or may withdraw approval.

(5) Withdrawal of Approval. The Board may withdraw approval from a program which fails to meet legal and educational requirements within the specified time. The program shall be removed from the list of Board approved vocational nursing educational programs.

(b) Factors Jeopardizing Program Approval Status--Approval may be changed or withdrawn for any of the following reasons:

(1) deficiencies in compliance with the rule;

(2) utilization of students to meet staffing needs in health care facilities;

(3) noncompliance with school's stated philosophy/mission, program design, objectives/outcomes, and/or policies;

(4) continual failure to submit records and reports to the Board office within designated time frames;

(5) failure to provide sufficient variety and number of clinical learning opportunities for students to achieve stated objectives/outcomes;

(6) failure to comply with Board requirements or to respond to Board recommendations within the specified time;

(7) student enrollments without sufficient faculty, facilities and/or patient census;

(8) failure to maintain a 80% passing rate on the licensing examination by first-time candidates;

(9) failure of program director to document annually the currency of faculty licenses; or

(10) other activities or situations that demonstrate to the Board that a program is not meeting legal requirements and standards.

(c) Ongoing Approval Procedures. Approval status is determined biennially by the Board on the basis of the program's compliance audit, NCLEX-PN® examination pass rate, and other pertinent data.

(1) Compliance Audit. Each approved vocational nursing educational program shall submit a biennial audit regarding its compliance with the Board's legal and educational requirements.

(2) NCLEX-PN® Pass Rates.

(A) Eighty percent (80%) of first-time candidates who complete the program of study are required to achieve a passing score on the NCLEX-PN® examination.

(B) When the passing score of first-time candidates who complete the vocational nursing educational program is less than 80% on the NCLEX-PN® examination during the examination year, the nursing program shall submit a self-study report that evaluates factors which contributed to the graduates' performance on the NCLEX-PN® examination and a description of the corrective measures to be implemented. The report shall follow Board guidelines.

(C) A warning shall be issued to the program when the pass rate of first-time candidates, as described in subsection (c)(2)(A) of this section, is less than 80% for two consecutive examination years.

(D) A program shall be placed on conditional approval status if, within one examination year from the date the warning is issued, the performance of first-time candidates fails to be at least 80% on the NCLEX-PN® examination, or the faculty fail to implement appropriate corrective measures.

(E) Approval may be withdrawn if the performance of first-time candidates fails to be at least 80% during the examination year following the date that the program was placed on conditional approval.

(F) A program issued a warning or placed on conditional approval status may request a review of the program's approval status by the Board at a regularly scheduled meeting if the program's

pass rate for first-time candidates during one examination year is at least 80%.

(3) Survey Visit. Each vocational nursing educational program shall be visited at least every six years after full approval has been granted, unless accredited by a Board-recognized national nursing accrediting agency.

(A) The Board may authorize staff to conduct a survey visit at any time based upon established criteria.

(B) After a program is fully approved by the Board, a report from a Board-recognized national nursing accrediting agency regarding a program's accreditation status may be accepted in lieu of a Board survey visit.

(C) A written report of the survey visit, compliance audit, and NCLEX-PN® examination pass rate shall be reviewed by the Board biennially at a regularly scheduled meeting.

(4) The Texas Board of Nursing will select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have standards equivalent to the Board's ongoing approval standards. Identified areas that are not equivalent to the Board's ongoing approval standards will be monitored by the Board on an ongoing basis.

(5) The Texas Board of Nursing will periodically review the standards of the national nursing accrediting agencies following revisions of accreditation standards or revisions in Board requirements for validation of continuing equivalency.

(6) The Texas Board of Nursing will deny or withdraw approval from a school of nursing or educational program that fails to:

(A) meet the prescribed course of study or other standard under which it sought approval by the Board.

(B) meet or maintain voluntary accreditation, by a school of nursing or educational program approved by the Board as stated in paragraph (7) of this subsection, with the national nursing accrediting agency selected by the Board under which it was approved or sought approval by the Board.

(C) maintain the approval of the state board of nursing of another state that the Board has determined has standards that are substantially equivalent to the Board's standards under which it was approved.

(7) A school of nursing or educational program is considered approved by the Board and exempt from Board rules that require ongoing approval if the program:

(A) is accredited and maintains voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards; and

(B) maintains an acceptable pass rate, as determined by the Board, on the applicable licensing exam.

(8) A school of nursing or educational program that fails to meet or maintain an acceptable pass rate, as determined by the Board, on applicable licensing examinations is subject to review by the Board.

(9) A school of nursing or educational program, approved by the Board as stated in paragraph (7) of this subsection, that does not maintain voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards is subject to review by the Board.

(10) The Board may assist the school or program in its effort to achieve compliance with the Board's standards.

(11) A school or program from which approval has been withdrawn may reapply for approval.

(12) A school of nursing or educational program accredited by an agency recognized by the Board shall:

(A) provide the board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board within three (3) months of receipt of official reports;

(B) notify the Board of any change in accreditation status within two (2) weeks following receipt of official notification letter; and

(C) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

(d) Notice of a program's approval status shall be sent to the director, chief administrative officer of the controlling agency/governing institution, and others as determined by the Board.

§214.7. Faculty.

(a) There shall be written personnel policies for nursing faculty that are in keeping with accepted educational standards and are consistent with the policies of the controlling agency/governing institution.

(1) Nursing policies that differ from those of the controlling agency/governing institution shall be consistent with nursing unit mission and goals (philosophy and outcomes).

(2) Written policies concerning workload for the director or coordinator shall allow for sufficient time for administrative responsibilities consistent with §214.6 of this chapter (relating to Administration and Organization).

(3) Faculty policies shall include, but not be limited to: qualifications, responsibilities, performance evaluation criteria, and terms of employment.

(4) Written policies for nursing faculty workload shall allow sufficient time for faculty to accomplish those activities related to the teaching-learning process.

(5) Position descriptions for the director/coordinator and nursing faculty outlining their responsibilities directly related to the nursing program shall be included in the nursing faculty handbook.

(6) Written policies for nursing faculty shall include: plans for faculty orientation to the institution and the nursing program, faculty development, and evaluation of faculty.

(A) Orientation of new nursing faculty members shall be initiated at the onset of employment.

(B) A plan for nursing faculty development shall be offered to encourage and assist faculty members to meet the nursing program's needs as well as individual faculty members' professional development needs.

(C) A variety of means shall be used to evaluate faculty performance such as self, student, peer and administrative evaluation.

(b) A vocational nursing educational program shall employ sufficient faculty members with educational preparation and expertise necessary to enable the students to meet the program goals. The number of faculty members shall be determined by such factors as:

(1) The number and level of students enrolled;

(2) The curriculum plan;

(3) Activities and responsibilities required of faculty;

(4) The number and geographic locations of affiliating agencies and clinical practice settings; and

(5) The level of care and acuity of clients.

(c) Faculty Qualifications and Responsibilities.

(1) Documentation of faculty qualifications shall be included in the official files of the program.

(2) Each nurse faculty member shall:

(A) Hold a current license or privilege to practice nursing in the State of Texas;

(B) Have been actively employed in nursing for the past three years or have advanced preparation in nursing, nursing education, and/or nursing administration.

(C) Have had three years varied nursing experiences since graduation.

(d) Faculty Waivers.

(1) In fully approved programs, if an individual to be appointed as faculty member does not meet the requirements for faculty as specified in subsection (c) of this section, the director or coordinator is permitted to waive the Board's requirements, if the program and prospective faculty member meet the following criteria and after notification to the Board of the intent to waive the Board's faculty requirements for a temporary time period not to exceed one year:

(2) Minimum program criteria:

(A) program's NCLEX-PN® Examination pass rate for the preceding exam year was 80% or above.

(B) total number of faculty waivers at program shall not exceed 10% of the total number of nursing faculty.

(3) Minimum criteria for prospective faculty member:

(A) holds a current license or privilege to practice as a vocational or registered nurse in the State of Texas;

(B) has been actively employed in nursing for at least two years in the last three years;

(C) if not actively employed in nursing for the past three (3) years, the prospective faculty's advanced preparation in nursing, nursing education, and nursing administration shall be considered; and

(D) prior relevant nursing employment.

(4) When the program does not meet the minimum program criteria or the prospective faculty member does not meet the minimum criteria for a faculty member, a petition for a waiver shall be submitted to the Board and be reviewed by the members of the Education Liaison Committee (ELC) for recommendation regarding approval and referred to the full Board for ratification.

(5) A waiver is valid for up to one year.

(6) The director or coordinator shall submit a sworn (notarized) notification of waiver to the Board.

(7) If an extension of the waiver is needed, the director or coordinator shall petition the Board for an extension of the original waiver.

(e) Military faculty--Federal laws and regulations regarding licensure of military nursing personnel shall apply to Texas based military faculty members functioning within vocational nursing educational programs.

(f) Non-nursing faculty are exempt from meeting the faculty qualifications as long as the teaching assignments are not nursing content or clinical nursing courses.

(g) All nursing faculty, as well as non-nursing faculty, who teach non-clinical nursing courses that are part of the nursing curriculum, e.g., biological, physical, social, behavioral and nursing sciences, including, body structure and function, microbiology, pharmacology, nutrition, signs of emotional health, and human growth and development, shall have sufficient educational preparation verified by the program director/coordinator as appropriate to these areas of teaching responsibility.

(h) Non-nursing faculty assigned to teach didactic nursing content shall be required to co-teach with nursing faculty in order to meet nursing course objectives.

(i) Teaching assignments shall be commensurate with the faculty member's education and experience in nursing.

(j) Faculty shall be responsible for:

(1) supervision of students in clinical learning experiences;

(2) all initial nursing procedures in the clinical area and ascertain that the student is competent before allowing the student to perform an actual nursing procedure independently;

(3) developing, implementing, and evaluating curriculum; and

(4) participating in the development, implementation, and enforcement of standards/policies for admission, progression, probation, and dismissal of students, and participation in academic guidance and counseling.

(k) Teaching activities shall be coordinated among full-time faculty, part-time faculty, and clinical preceptors.

(l) There shall be a minimum of one full-time nursing instructor for the program.

(m) A director/coordinator without major teaching or clinical responsibilities shall not be considered a full-time instructor for purposes of meeting the Board's requirements related to having a sufficient number of nursing faculty for a nursing educational program.

(n) Substitute faculty may be employed to meet emergent program needs. Substitute faculty beyond ten consecutive working days and/or on an interim basis shall meet qualifications as specified in subsection (c) of this section.

(o) Faculty Organization:

(1) The faculty shall be organized with written policies and procedures and/or bylaws to guide the faculty and program's activities, including processes for enforcement of written student policies.

(2) The faculty shall meet regularly and function in such a manner that all members participate in planning, implementing and evaluating the nursing program. Such participation includes, but is not limited to the initiation and/or change in program policies, personnel policies, curriculum, utilization of affiliating agencies, and program evaluation.

(A) Committees necessary to carry out the functions of the program shall be established with duties and membership of each committee clearly defined in writing.

(B) Minutes of faculty organization and meetings shall document the reasons for actions and the decisions of the faculty and shall be available for reference.

(C) Part-time faculty may participate in all aspects of the program. Clear lines of communication of program policies, objectives and evaluative criteria shall be included in policies for part-time faculty.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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James W. Johnston
General Counsel
Texas Board of Nursing
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CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §§215.1 - 215.13

The Texas Board of Nursing (Board) adopts amendments to §§215.1 - 215.13, concerning Professional Nursing Education. Sections 215.7 and 215.11 are adopted with minor grammatical changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6273) and will be republished. Sections 215.1 - 215.6, 215.8 - 215.10, 215.12 and 215.13 are adopted without changes to the proposed text and will not be republished.

Elsewhere in this issue of the *Texas Register,* the Board is contemporaneously adopting amendments to §§214.1 - 214.13, concerning Vocational Nursing Education.

At the July 2006 Board meeting, the Board issued a charge to the Advisory Committee on Education (ACE) to review rule language regarding clarity and consistency between Chapter 214 and Chapter 215. ACE addressed this charge during the June 13, 2008, meeting in Austin and continued the process during the June 24, 2008, telephonic conference. The amendments to Chapter 215 are as follows:

Section 215.1, General Requirements - addition of language provides clarity for the intent of the rule and matches wording in the statute;

Section 215.2, Definitions - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 215.3, Program Development, Expansion, and Closure - addition, clarification, deletion and revision of language provide clarity for the intent of the rules, demonstrate consistency between the rules, and describe the processes that actually occur and are outlined in Board guidelines;

Section 215.4, Approval - addition, clarification, deletion, reorganization and revision of language provide clarity for the intent of the rules, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 215.5, Philosophy/Mission and Objectives/Outcomes - addition and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and match wording in the statute;

Section 215.6, Administration and Organization - addition, reorganization, and revision of language provide clarity for the intent of the rule, consistency between the rules, and describe the processes that actually occur;

Section 215.7, Faculty - addition, deletion, revision, rephrasing, and reorganization of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 215.8, Students - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 215.9, Program of Study - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 215.10, Clinical Learning Experiences - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 215.11, Facilities, Resources, and Services - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 215.12, Records and Reports - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur; and

Section 215.13, Total Program Evaluation - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur.

Additional non-substantive changes were made throughout Chapter 215 for the purposes of correcting spelling/grammatical errors and providing correct numbering of items.

No comments were received regarding adoption of the rules.

The amendments are adopted pursuant to the authority of Texas Occupations Code §301.157, and §301.151 which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

§215.7. Faculty.

(a) There shall be written personnel policies for nursing faculty that are in keeping with accepted educational standards and are consistent with those of the controlling agency/governing institution.

(1) Nursing policies that differ from those of the controlling agency/governing institution shall be consistent with nursing unit mission and goals (philosophy and outcomes).

(2) Written policies concerning workload for the dean or director shall allow for sufficient time for administrative responsibilities consistent with §215.6 of this chapter (relating to Administration and Organization).

(3) Faculty policies shall include, but not be limited to: qualifications, responsibilities, performance evaluation criteria, and terms of employment.

(4) Written policies for nursing faculty workload shall allow sufficient time for faculty to accomplish those activities related to the teaching-learning process.

(5) Position descriptions for the dean/director and nursing faculty outlining their responsibilities directly related to the nursing program shall be included in the nursing faculty handbook.

(6) Written policies for nursing faculty shall include: plans for faculty orientation to the institution and the nursing program, faculty development, and evaluation of faculty.

(A) Orientation of new nursing faculty members shall be initiated at the onset of employment.

(B) A plan for nursing faculty development shall be offered to encourage and assist faculty members to meet the nursing program's needs as well as individual faculty members' professional development needs.

(C) A variety of means shall be used to evaluate faculty performance such as self, student, peer and administrative evaluation.

(b) A professional nursing educational program shall employ sufficient faculty members with graduate preparation and expertise necessary to enable the students to meet the program goals. The number of faculty members shall be determined by such factors as:

(1) The number and level of students enrolled;

(2) The curriculum plan;

(3) Activities and responsibilities required of faculty;

(4) The number and geographic locations of affiliating agencies and clinical practice settings; and

(5) The level of care and acuity of clients.

(c) Faculty Qualifications and Responsibilities.

(1) Documentation of faculty qualifications shall be included in the official files of the programs.

(2) Each nurse faculty member shall:

(A) Hold a current license or privilege to practice as a registered nurse in the State of Texas;

(B) Show evidence of teaching abilities and maintaining current knowledge, clinical expertise, and safety in subject area of teaching responsibility;

(C) Hold a master's degree or doctorate degree, preferably in nursing;

(D) A nurse faculty member holding a master's degree or doctorate degree in a discipline other than nursing shall hold a bachelor's degree in nursing from an approved or accredited baccalaureate program in nursing; and

(i) if teaching in a diploma or associate degree nursing program, shall have at least six graduate semester hours in nursing appropriate to assigned teaching responsibilities, or

(ii) if teaching in a baccalaureate level program, shall have at least 12 graduate semester hours in nursing appropriate to assigned teaching responsibilities.

(d) Faculty Waivers.

(1) In fully approved programs, if an individual to be appointed as faculty member does not meet the requirements for faculty as specified in subsection (c) of this section, the dean or director is permitted to waive the Board's requirements, if the program and prospective faculty member meet the following criteria and after notification to the Board of the intent to waive the Board's faculty requirements for a temporary time period not to exceed one year:

(2) Minimum program criteria:

(A) program's NCLEX-RN® Examination pass rate for the preceding exam year was 80% or above;

(B) total number of faculty waivers at program shall not exceed 10% of the total number of nursing faculty; and

(3) Minimum criteria for prospective faculty member:

(A) holds a current license or privilege to practice as a registered nurse in the State of Texas;

(B) has at least two years in the last four years of nursing practice experience in the anticipated subject area of teaching responsibility;

(C) has earned a bachelor's degree in nursing or completed, as part of a nursing education program culminating in a master's or doctorate degree in nursing, the course work equivalent to the course work required for a bachelor's degree in nursing; and either

(i) is currently enrolled in a master's nursing education program and has earned a minimum of 50% of the required credits toward the master's degree in nursing, excluding thesis or professional paper; or

(ii) holds a master's degree in another field and has a documented plan to complete, within a designated time frame, the required number of graduate semester hours in nursing appropriate to the anticipated subject area of teaching responsibility, six graduate semester hours in nursing to teach in a diploma or associate degree nursing education program or 12 graduate semester hours in nursing to teach in a baccalaureate degree or entry-level master's degree in nursing education program.

(4) When the program does not meet the minimum program criteria or the prospective faculty member does not meet the minimum criteria for a faculty member:

(A) a petition for a waiver shall be submitted to the Board and be reviewed by the members of the Education Liaison Committee (ELC) for recommendation regarding approval and referred to the full Board for ratification; or

(B) a petition for an emergency waiver may be submitted to the Board staff for approval when a vacancy occurs because a faculty member fails to report as planned, i.e., sudden illness or death of a faculty member, or there is an unexpected resignation, or qualified applicants/prospective faculty are not available.

(5) A waiver is valid for up to one year.

(6) The director or coordinator shall submit a sworn (notarized) notification of waiver to the Board.

(7) If an extension of the waiver is needed, the director or coordinator shall petition the Board for an extension of the original waiver.

(e) Non-nursing faculty are exempt from meeting the faculty qualifications as long as the teaching assignments are not nursing content or clinical nursing courses.

(f) All nursing faculty, as well as non-nursing faculty, who teach non-clinical nursing courses that are part of the nursing curriculum, e.g., biological, physical, social, behavioral and nursing sciences, including pathophysiology, pharmacology, research, nutrition, human growth and development, management, and statistics, shall have sufficient graduate level educational preparation verified by the program dean or director as appropriate to these areas of responsibility.

(g) Non-nursing faculty assigned to teach didactic nursing content shall be required to co-teach with nursing faculty in order to meet nursing course objectives.

(h) Teaching assignments shall be commensurate with the faculty member's education and experience in nursing.

(i) Faculty shall be responsible for:

(1) supervision of students in clinical learning experiences;

(2) all initial nursing procedures in the clinical area and ascertain that the student is competent before allowing the student to perform an actual nursing procedure independently;

(3) developing, implementing, and evaluating curriculum; and

(4) participating in the development, implementation, and enforcement of standards/policies for admission, progression, probation, and dismissal of students, and participation in academic guidance and counseling.

(j) Teaching activities shall be coordinated among full-time faculty, part-time faculty, clinical preceptors and clinical teaching assistants.

(k) There shall be a minimum of one full-time nursing instructor for the program.

(l) A dean/director without major teaching or clinical responsibilities shall not be considered a full-time instructor for purposes of meeting the Board's requirements related to having a sufficient number of nursing faculty for a nursing educational program.

(m) Substitute faculty may be employed to meet emergent program needs. Substitute faculty shall meet qualifications as specified in subsection (c)(2) of this section.

(n) Faculty Organization:

(1) The faculty shall be organized with written policies and procedures and/or bylaws to guide the faculty and program's activities, including processes for enforcement of written student policies.

(2) The faculty shall meet regularly and function in such a manner that all members participate in planning, implementing and evaluating the nursing program. Such participation includes, but is not limited to the initiation and/or change in program policies, personnel policies, curriculum, utilization of affiliating agencies, and program evaluation.

(A) Committees necessary to carry out the functions of the program shall be established with duties and membership of each committee clearly defined in writing.

(B) Minutes of faculty organization and meetings shall document the reasons for actions and the decisions of the faculty and shall be available for reference.

(C) Part-time faculty may participate in all aspects of the program. Clear lines of communication of program policies, objectives and evaluative criteria shall be included in policies for part-time faculty.

§215.11. Facilities, Resources, and Services.

(a) The controlling agency/governing institution shall be responsible for providing:

(1) educational facilities,

(2) resources, and

(3) services which support the effective development and implementation of the nursing educational program.

(b) An appropriately equipped skills laboratory shall be provided to accommodate maximum number of students allowed for the program.

(1) The laboratory shall be equipped with hot and cold running water.

(2) The laboratory shall have adequate storage for equipment.

(c) The dean/director and faculty shall have adequate secretarial and clerical assistance to meet the needs of the program.

(d) The physical facilities shall be adequate to meet the needs of the program in relation to the size of the faculty and the student body.

(1) The dean/director shall have a private office.

(2) Faculty offices shall be conveniently located and adequate in number and size to provide faculty with privacy for conferences with students and uninterrupted work.

(3) Space for clerical staff, records, files, and equipment shall be adequate.

(4) There shall be mechanisms which provide for the security of sensitive materials, such as examinations and health records.

(5) Classrooms, laboratories, and conference rooms shall be conducive to learning and adequate in number, size, and type for the number of students and the educational purposes for which the rooms are used.

(6) Teaching aids shall be provided to meet the objectives/outcomes of the program.

(7) Adequate restrooms and lounges shall be provided convenient to the classroom.

(e) The learning resources, library, and departmental holdings shall be current, use contemporary technology appropriate for the level of the curriculum, and be sufficient for the size of the student body and the needs of the faculty.

(1) Provisions shall be made for accessibility, availability, and timely delivery of information resources.

(2) Facilities and policies shall promote effective use, i.e. environment, accessibility, and hours of operation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200805250

James W. Johnston
General Counsel
Texas Board of Nursing
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For further information, please call: (512) 305-6811

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CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.17

The Texas Board of Nursing (Board) adopts an amendment to §217.17, concerning Nursing Jurisprudence Exam (NJE), without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6304) and will not be republished.

The amendment is necessary to implement the recommendations made by the Sunset Advisory Commission.

House Bill 2426 (80th Regular Texas Legislative Session, 2007, Truitt), in part enacted the requirement in NPA §301.252 that requires the Board of Nursing (BON) to adopt a rule regarding the development of the examination, applicable fees, administration of the examinations, re-examination procedures, grading procedures, and notice of results. This requirement will effect applications received on or after September 1, 2008, from candidates for initial licensure by examination and those seeking to endorse their nursing license to Texas. Since the initial adoption of §217.17 in November 2007, board staff have continued to work out the details of development and administration of the NJE. In doing so, staff have determined that the original rule language requires revision in order to accurately reflect the processes now being put into place for this new examination.

No comments were received regarding adoption of the rule.

The amendment is adopted pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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James W. Johnston
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CHAPTER 223. FEES

22 TAC §223.1

The Texas Board of Nursing (Board) adopts an amendment to §223.1, concerning Fees, without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6308) and will not be republished.

The amendment sets a "not to exceed" fee for the jurisprudence exam. Currently, the jurisprudence exam is being developed in house by the Board staff and iBridge Group. The Board staff anticipates that the board will be able to absorb all developmental and maintenance costs at this time but would like the option to charge a fee if it is deemed necessary at a later date. The Board staff will evaluate the costs of the jurisprudence examination on March 1, 2009 and again on August 31, 2009.

No comments were received regarding adoption of the rule.

The amendment is adopted pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.76

The Texas State Board of Public Accountancy adopts an amendment to §501.76, concerning Records and Work Papers, without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6308). The text of the rule will not be republished.

The amendment will remove the phrases "regardless of the status of the client or former client's account" and "either in hard copy or other useable form" and will add a separate sentence "The records and work papers may be provided to the client in either hard copy or other useable form."

In keeping with changes in commonly used technology, the amendment will function by clarifying that various formats of the records and work papers to be returned to a client or former client are acceptable provided they are useable. The amendment will make the rule clearer that the specified records and work papers must be returned to clients and former clients.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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CHAPTER 502. PEER ASSISTANCE

22 TAC §502.2

The Texas State Board of Public Accountancy adopts new §502.2, concerning Texas State Board of Public Accountancy Policy Statement of the Peer Assistance Oversight Committee, without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6309). The text of the rule will not be republished.

The new rule moves the rule text for §505.11 into its own chapter, Chapter 502, concerning Peer Assistance.

The new rule will function by making it easier for the public to locate information regarding the Board's program and oversight committee for CPAs, CPA candidates, and accounting students needing to seek assistance for impairment due to chemical dependency and/or mental illness.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7848

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CHAPTER 505. THE BOARD

22 TAC §505.7

The Texas State Board of Public Accountancy adopts an amendment to §505.7 concerning Vacancies in the Board without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6310). The text of the rule will not be republished.

The amendment will replace "offices" with "officers."

The amendment will function by clarifying the board rule regarding vacancies in the Board's leadership.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §505.8

The Texas State Board of Public Accountancy adopts an amendment to §505.8 concerning Board Meetings without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6311). The text of the rule will not be republished.

The amendment will replace the phrase "presiding officer shall give written" with the phrase "executive director is responsible for providing" and replace the phrase "as required by law" with the phrase "pursuant to the Open Meetings Act" in subsection (a) and in subsection (b) delete the phrase "as required by statute" and replace the word "or" with the phrase ", the board and".

The amendment will function by providing a clearer rule regarding those Board procedures necessary to comply with the Open Meetings Act.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7848

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22 TAC §505.10

The Texas State Board of Public Accountancy adopts an amendment to §505.10 concerning Board Committees without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6312). The text of the rule will not be republished.

The amendment deletes subsection (e)(1)(C) "cease and desist orders pursuant to board rule §518.2 of this title and violations of cease and desist orders pursuant to board rule §518.3 of this title;" and reletter the remaining subparagraphs. In subsection (e)(3)(A), "and courses that may be used to meet the education requirements to take the examination" is added. In subsection (e)(10), the phrase "who shall also serve as investigators" is deleted and the phrase "constructive enforcement advisory" is added.

The amendment will function by making the Board rule regarding the Board's Committees' responsibilities clearer.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 25, 2008.

TRD-200805169
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 15, 2008
Proposal publication date: August 8, 2008
For further information, please call: (512) 305-7848

♦ ♦ ♦

22 TAC §505.11

The Texas State Board of Public Accountancy adopts the repeal of §505.11, concerning Texas State Board of Public Accountancy Policy Statement of the Peer Assistance Oversight Committee, without changes to the proposal as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6313).

The repeal allows the Board to relocate the rule to Chapter 502, concerning Peer Assistance.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7848

♦ ♦ ♦

22 TAC §505.12

The Texas State Board of Public Accountancy adopts an amendment to §505.12 concerning Enforcement Committees without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6314). The text of the rule will not be republished.

The amendment in subsection (a) will add the word "the"; replace the phrase "committee major case enforcement committee" with the phrase "I and II committees"; add the word "the" remove the word "each" and remove the phrase "one of". In subsection (b), the amendment will replace the word "and" with the phrase "serving on"; replace the word "in" with the word "of" and replace the word "considered" with the word "investigated."

The amendment will function by making the board rules consistent by replacing the formerly used "Major Case Committee" with the currently used name, "the Technical Standards Review II Committee." The amendment also clarifies the rule that enforcement committee members shall recuse themselves from the final disposition board vote of any case their committee investigated.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7848

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CHAPTER 507. EMPLOYEES OF THE BOARD

22 TAC §507.2

The Texas State Board of Public Accountancy adopts an amendment to §507.2 concerning Staff without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6314). The text of the rule will not be republished.

The amendment will add the phrase "employed in an executive, administrative or professional capacity as that phrase is used for purposes of establishing an exemption to the overtime provisions of the Fair Labor Standards Act and its subsequent amendments if the prospective employee is acting in the capacity of an officer, executive board or executive committee member, employee, or paid consultant of a Texas trade association in the field of public accountancy or the prospective employee's spouse is acting in the capacity of an officer, executive board or executive committee member, manager or paid consultant of a Texas trade association or be".

The amendment will function by providing a clearer statement regarding Board procedures necessary to comply with the Fair Labor Standards Act.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7848

♦ ♦ ♦

22 TAC §507.4

The Texas State Board of Public Accountancy adopts an amendment to §507.4 concerning Confidentiality without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6315). The text of the rule will not be republished.

The amendment will eliminate specific circumstances to clarify the Board's desire to assist other governmental, regulatory and law enforcement agencies in their charged service to the public.

The amendment will function, by eliminating express examples, which will simplify the rule without changing the substance of the prior rule.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7848

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CHAPTER 509. RULEMAKING PROCEDURES

22 TAC §509.2

The Texas State Board of Public Accountancy adopts an amendment to §509.2, concerning Suspension of Rules, without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6316). The text of the rule will not be republished.

The amendment replaces "a public emergency or imperative public necessity" with "an imminent peril to the public health, safety or welfare or a requirement of a state or federal law."

The amendment will function by clarifying the circumstances when the Board may suspend the operation of its rules.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §509.6

The Texas State Board of Public Accountancy adopts an amendment to §509.6, concerning Rulemaking Procedures, without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6317). The text of the rule will not be republished.

The amendment will replace "encourage" with "utilize."

The amendment will function by providing a more definite statement regarding the Board's use of negotiated rulemaking.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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CHAPTER 517. PRACTICE BY CERTAIN OUT OF STATE FIRMS AND INDIVIDUALS

22 TAC §517.2

The Texas State Board of Public Accountancy adopts an amendment to §517.2, concerning Practice by Certain Out of State Individuals, without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4474). The text of the rule will not be republished.

The amendment to §517.2 will replace the word "with" with the phrase "that has".

The amendment will function by providing a clearer rule.

Two comments were received regarding adoption of the rule from an individual on behalf of Deloitte & Touché USA LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP.

The commenter suggested that the Board by rule determine in §517.2 that the Uniform Accountancy Act's (UAA) requirements for licensure (as verified by the NASBA National Qualification Appraisal Service) are comparable to or exceed those in the Texas Public Accountancy Act. The commenter suggested that the language in our rules is needed in order to properly implement Section 901.462(a)(1) and (a)(2) of the Texas Public Accountancy Act.

The commenter also asked that the Board waive the 150 hour requirement for certification until January 1, 2012 for CPAs licensed in states that do not require 150 hours to be certified for purposes of being permitted to practice in Texas under a practice privilege.

In response to these comments, the Board visited with the representatives of the above-mentioned firms in a telephone conference call. Upon recognizing that Board Rule §512.2(b) already addresses the Board's determination that the UAA is comparable to the education, examination and experience requirements of the Texas Public Accountancy Act the representatives agreed that there was no need for the Board to revise Rule §517.2 to provide their suggested Board determination language.

In addition, since the Texas Public Accountancy Act requires 150 hours of college credit to be certified in Texas, the commenter also agreed that the Board should not adopt a rule that would permit certification with fewer hours than that required by the Act.

Staff has reviewed the written and oral comments. As staff discussed above, staff believes (with the exception of the 150 hour requirement which is established by the Legislature in section 901.252 of the Texas Public Accountancy Act) the proposed rule as adopted addresses all of the commenter's concerns. All of the commenter's concerns are assimilated in the proposed rule as adopted. Accordingly staff believes no change is necessary.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas State Board of Public Accountancy
Effective date: October 15, 2008
Proposal publication date: June 6, 2008
For further information, please call: (512) 305-7848

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CHAPTER 518. UNAUTHORIZED PRACTICE OF PUBLIC ACCOUNTANCY

22 TAC §518.2

The Texas State Board of Public Accountancy adopts an amendment to §518.2, concerning Cease and Desist Orders, without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6318). The text of the rule will not be republished.

The amendment adds the following language to the end of subsection (a): "The Executive Director and the person under investigation may agree to a cease and desist order at any time; however, such an agreed cease and desist order must be ratified by the board.

(1) The Executive Director may refer an investigation to the Constructive Enforcement Committee for its consideration before taking any action. In such cases, the Constructive Enforcement Committee may recommend that staff dismiss the matter without further action, instruct staff to investigate the matter further or recommends that staff offer the person under investigation a cease and desist order.

(2) The Executive Director may enlist the aid of the members of the Constructive Enforcement Advisory Committee in gathering evidence during investigations of the unauthorized practice of public accountancy."

The amendment will function by authorizing the Executive Director to negotiate, subject to the Board's ratification, cease and desist orders in unauthorized practice of public accountancy cases. The rule also defines the Constructive Enforcement Committee's role in unauthorized practice of public accountancy cases.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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Proposal publication date: August 8, 2008
For further information, please call: (512) 305-7848

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22 TAC §518.3

The Texas State Board of Public Accountancy adopts an amendment to §518.3, concerning Violation of a Cease and Desist Order, without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6319). The text of the rule will not be republished.

The amendment added the following language to the end of the rule: "and Subchapter L of the Texas Public Accountancy Act, as amended.

(b) The board staff acting through the Executive Director will offer the person found in violation of a cease and desist order an agreed consent order.

(1) The agreed consent order will act as the preliminary report as required by §901.553 of the Act, including findings of fact to support the administrative penalty as well as the amount of the penalty to be imposed.

(2) Board staff will advise the person found in violation of a cease and desist order that he has 20 days to either sign the agreed consent order or to request a hearing in writing, as required by §901.554 of the Act.

(3) If the person found to be in violation of a cease and desist order signs the agreed consent order, then the agreed consent order will be presented to the board for its consideration. If the board ratifies the agreed consent order, then it will issue a board order."

The amendment will function by clarifying the Board's procedure surrounding violations of cease and desist and agreed consent orders.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §518.4

The Texas State Board of Public Accountancy adopts an amendment to §518.4, concerning Administrative Penalty Guidelines for Violations of Cease and Desist Orders, without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6320). The text of the rule will not be republished.

The amendment inserts 'asserts an expertise in accounting through use of the term "accounting service" or any variation of that term' into paragraphs (3) and (4).

The amendment will function by clarifying the applicable range of punishment for various unlicensed activity.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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CHAPTER 519. PRACTICE AND PROCEDURE
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §519.2

The Texas State Board of Public Accountancy adopts an amendment to §519.2 concerning Definitions without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6321). The text of the rule will not be republished.

The amendment will remove the phrase "which are the Behavioral Enforcement Committee, the Technical Standards Review I Committee and the Technical Standards Review II Committee" in paragraph (5); in paragraph (7), add the word "the"; and in paragraph (8), replace the word "cost" with the word "Cost".

The amendment will function by providing a clearer more concise rule including by clarifying that the rule applies to all enforcement committees.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §519.4

The Texas State Board of Public Accountancy adopts an amendment to §519.4 concerning Conduct and Decorum without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6322). The text of the rule will not be republished.

In both subsections (a) and (b), the amendment replaced "Committee" with "committee".

The amendment will function through the consistent use of terms and grammar throughout the board rules.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7848

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22 TAC §519.7

The Texas State Board of Public Accountancy adopts an amendment to §519.7, concerning Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board, without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6323). The text of the rule will not be republished.

The amendment will add the phrase "deferred prosecution, withheld adjudication" twice in subsections (a), (b), (c), and (d) and once in subsection (f); the amendment will also replace the word "marihuana" with the word "marijuana".

The amendment will function by clarifying when the board may discipline a subject person pursuant to an additional type of underlying plea bargain.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7848

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22 TAC §519.9

The Texas State Board of Public Accountancy adopts an amendment to §519.9, concerning Administrative Penalty Guidelines without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6324). The text of the rule will not be republished.

The amendment will replace the word "subpoena" for the word "court order" in item number 33 of Figure: 22 TAC §519.9(a).

The amendment will function by amending the description of the violation listed in the penalty guidelines table so rule violation description number 33 reflects the recent amendments to the underlying laws and rules, including rule §501.90(17).

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7848

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22 TAC §519.10

The Texas State Board of Public Accountancy adopts new §519.10, concerning Cooperation with Regulatory Bodies, without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6325). The text of the rule will not be republished.

The new rule adds the following requirements necessary to comply with §901.160(e) of the Public Accountancy Act: "The board, pursuant to §901.160(e) of the Public Accountancy Act, may disclose information that is confidential under §901.160(c) of the Public Accountancy Act to a governmental, regulatory or law enforcement agency if the requesting agency makes the request in writing and states that it is involved in an enforcement action."

The new rule will function by outlining the prerequisites necessary for other agencies to request information from the board, including the other agency's request must be in writing and must disclose that the agency is in an enforcement action.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7848

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SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

22 TAC §519.24

The Texas State Board of Public Accountancy adopts an amendment to §519.24 concerning Committee Recommendations without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6326). The text of the rule will not be republished.

The amendment will replace the word "will" with the word "may" in subsections (b) and (c); in subsection (d), the amendment replaces "30" with the phrase "a specified number of", adds the phrase "in writing", and replaces "30 day period" with the phrase "specified number of days".

The amendment will function by providing enforcement committees greater discretion in making recommendations of final disposition of an investigation, as well as offering more discretion in offering settlements to respondents of investigations.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §519.25

The Texas State Board of Public Accountancy adopts an amendment to §519.25 concerning Mediation and Alternative Dispute Resolution without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6327). The text of the rule will not be republished.

The amendment will add to the word "to" in subsection (c).

The amendment will function by making the rule clearer.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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SUBCHAPTER C. PROCEEDINGS AT SOAH

22 TAC §519.40

The Texas State Board of Public Accountancy adopts an amendment to §519.40 concerning General Provisions without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6328). The text of the rule will not be republished.

To subsection (a), the amendment adds the phrase "determine the sanctions and".

The amendment will function by providing an express and definitive statement that the Board reserves the right to determine sanctions in disciplinary cases.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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CHAPTER 519. PRACTICE AND PROCEDURE

The Texas State Board of Public Accountancy adopts the repeal of §§519.41, 519.42, and 519.44 - 519.53, concerning Proceedings at SOAH; and §519.70, concerning Proposals for Decision, without changes to the proposal as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6329).

The repeal will eliminate rules that have been superseded by procedural rules adopted by the State Office of Administrative Hearings and that are no longer relevant to the Board's regulatory program.

No comments were received regarding adoption of the repeal.

SUBCHAPTER C. PROCEEDINGS AT SOAH

22 TAC §§519.41, 519.42, 519.44 - 519.53

The repeal is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7848

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SUBCHAPTER D. PROCEDURES AFTER HEARING

22 TAC §519.70

The repeal is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. PROCEEDINGS AT SOAH

22 TAC §519.43

The Texas State Board of Public Accountancy adopts an amendment to §519.43 concerning Emergency Suspension without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6330). The text of the rule will not be republished.

The amendment will replace "inconvenient for any member of the Committee" with the phrase "is difficult or impossible" in subsection (c).

The amendment will function by making the emergency suspension hearing requirements consistent with Open Meetings Act's requirements.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 25, 2008.

TRD-200805185
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 15, 2008
Proposal publication date: August 8, 2008
For further information, please call: (512) 305-7848

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SUBCHAPTER D. PROCEDURES AFTER HEARING

22 TAC §519.71

The Texas State Board of Public Accountancy adopts an amendment to §519.71 concerning Exceptions and Replies without changes to the proposed text as published in the August 8, 2008 issue of the *Texas Register* (33 TexReg 6331). The text of the rule will not be republished.

The amendment adds the following sentence to subsection (d): "The presiding officer may waive the twenty day notice requirement if such action would best serve the public interest."

The amendment will function by providing greater flexibility when considering whether to allow oral arguments before the Board.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200805186
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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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CHAPTER 526. BOARD OPINIONS

22 TAC §526.1

The Texas State Board of Public Accountancy adopts an amendment to §526.1 concerning Issuance of Opinions without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6332). The text of the rule will not be republished.

The amendment inserts the phrase "facts specific to the situation and".

The amendment will function by clarifying the scope of opinions issued by the Board.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 25, 2008.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §526.2

The Texas State Board of Public Accountancy adopts an amendment to §526.2 concerning Procedure without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6333). The text of the rule will not be republished.

The amendment to subsection (a) will add the following phrases: "determine if the opinion request is appropriate for board consideration and if so submit a recommended." The amendment also included the sentence: "The board may decline to consider requests for opinions on interpretations of the Public Accountancy Act or board rules from persons involved in litigation."

The amendment will function by providing clarity as to what circumstances the board may issue opinions.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 25, 2008.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §526.3

The Texas State Board of Public Accountancy adopts an amendment to §526.3 concerning Advisory Opinions without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6333). The text of the rule will not be republished.

The amendment will add the words "and" and "specific". It also will add the phrase "on the board" and the sentence "Board staff may respond to routine questions without the need for issuing formal staff opinions."

The amendment will function by listing the required qualifications required in formal staff opinions. It will also clarify that Board staff may respond to routine questions without the need for issuing formal staff opinions.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 49. ORAL HEALTH IMPROVEMENT SERVICES PROGRAM

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts the repeal of §§49.1 - 49.15 and 49.17, and new Subchapters A - D, §§49.1 - 49.18, concerning the dental program authorized under the Oral Health Improvement Act, Health and Safety Code, Chapter 43, without changes to the proposed text as published in the June 13, 2008, issue of the *Texas Register* (33 TexReg 4592) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The Oral Health Improvement Services Program (program) rules are used to administer the State Oral Health Program. When fully funded, the program can provide comprehensive oral health services to eligible individuals. Currently, only the dental surveillance, data collection and reporting, and preventive services are funded. The treatment services, which include emergency and restorative services but not orthodontic services, and oral health promotion and education, currently are not funded.

The purpose of the program is to provide comprehensive oral health services to eligible individuals. Based on available funding and priority, oral health services may include dental surveil-

lance, data collection and reporting; provision of preventive oral health services; provision of emergency oral health services; provision of comprehensive oral health services; and oral health promotion and education. Through currently available funding derived from state general revenue and federal grant dollars, central office staff and five regional dental teams consisting of a dentist and dental hygienist conduct dental surveillance, data collection and reporting, and provide preventive oral health services. These services are offered to eligible individuals, which are primarily pre-school and school-age children on the free and reduced lunch program in rural areas of the state who have limited or no access to preventive dental services. Historically, the funds were allocated for the provision of preventive, emergency and comprehensive dental services as well as oral health promotion and education.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 49.1- 49.15 and 49.17 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist, because rules on this subject are needed. Although the treatment, health promotion, and education portions of the program are not currently funded, retaining the rules allows the oral health treatment program to be implemented quickly if adequate funding is made available.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions. Section 49.1 describes the purpose and application of the rules. Section 49.2 sets forth the definitions used in the rules. Section 49.3 addresses the issue of program priorities and the fact that the provision of services is dependent upon funding. Section 49.4 indicates the methods the department may use to deliver services.

Subchapter B. Recipient Participation. Section 49.5 describes the application process for an individual to be prior authorized for oral health treatment services. Section 49.6 sets forth financial and residency requirements related to eligibility. Section 49.7 addresses the final eligibility determinant to receive oral health treatment services, which involves a dental examination. Section 49.8 addresses the criteria and process for denial, modification, suspension, and termination of oral health treatment services. Section 49.9 addresses a recipient's financial obligations and the potential for recovery of costs by the department.

Subchapter C. Provider Participation. Section 49.10 describes the criteria and requirements for providers to participate in the program. Section 49.11 describes the provider application and contracting process. Section 49.12 addresses the criteria and process for termination of a provider contract. Section 49.13 addresses the payment of a non-provider for emergency care. Section 49.14 describes process and requirements for payment of provider claims. Section 49.15 describes when administrative sanctions may be imposed against a provider.

Subchapter D. Appeals Process. Section 49.16 addresses the administrative review process for an applicant, recipient, or provider to appeal certain program actions and decisions. Section 49.17 sets forth the basis for the right to request a due process hearing by an applicant, recipient, or provider. Section 49.18 describes the due process hearing.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

25 TAC §§49.1 - 49.15, 49.17

STATUTORY AUTHORITY

The repeals are authorized by the Health and Safety Code, Chapter 43, which authorizes the department to provide comprehensive oral health services to eligible individuals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 26, 2008.

TRD-200805239
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: October 16, 2008
Proposal publication date: June 13, 2008
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §§49.1 - 49.4

STATUTORY AUTHORITY

The new sections are authorized by the Health and Safety Code, Chapter 43, which authorizes the department to provide comprehensive oral health services to eligible individuals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
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SUBCHAPTER B. RECIPIENT PARTICIPATION

25 TAC §§49.5 - 49.9

STATUTORY AUTHORITY

The new sections are authorized by the Health and Safety Code, Chapter 43, which authorizes the department to provide comprehensive oral health services to eligible individuals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. PROVIDER PARTICIPATION

25 TAC §§49.10 - 49.15

STATUTORY AUTHORITY

The new sections are authorized by the Health and Safety Code, Chapter 43, which authorizes the department to provide comprehensive oral health services to eligible individuals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER D. APPEALS PROCESS

25 TAC §§49.16 - 49.18

STATUTORY AUTHORITY

The new sections are authorized by the Health and Safety Code, Chapter 43, which authorizes the department to provide comprehensive oral health services to eligible individuals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 97. COMMUNICABLE DISEASES

SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

25 TAC §97.14

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts new §97.14 concerning a program for reporting methicillin-resistant *Staphylococcus aureus* (MRSA), a bacteria primarily associated with skin and soft tissue infections. The rule is adopted with changes to the proposed text as published in the March 28, 2008 issue of the *Texas Register* (33 TexReg 2653).

BACKGROUND AND PURPOSE

The new section is necessary to comply with House Bill (HB) 1082, 80th Legislature, Regular Session, 2007, (now codified in part as Health and Safety Code, §81.0445), which requires the department to conduct a pilot program for reporting MRSA. A health authority that demonstrates an interest and possesses the resources to conduct the program will manage the program.

The department is required to select a local health authority to administer the program. The program would require: (1) all clinical laboratories within the area served by the local health authority to report all cases of MRSA; (2) study the cost and feasibility of adding MRSA to the reportable disease list; (3) collect data related to the possible sources and preventions; (4) provide information about MRSA; and (5) compile and make available to the public a summary of the program. Not later than September 1, 2009, the department shall submit to the legislature a report concerning the effectiveness of the program in tracking and reducing the number of MRSA infections.

SECTION-BY-SECTION SUMMARY

The purpose of the program is stated in §97.14(a). New §97.14(b) defines the terms "MRSA" and "MRSA infection." New §97.14(c) provides language stating that the pilot program will be conducted by health authorities serving Bexar, Brazos, Potter, and Randall counties. New §97.14(c) provides language informing the medical provider and clinical or hospital laboratory staff where to report MRSA infection. New §97.14(d) provides language stating what information shall be reported for each MRSA infection. New §97.14(e) and §97.14(f) state when reporting of MRSA infections shall begin and the date when reporting will end.

FISCAL NOTE

Adolfo Valadez, MD, MPH, Assistant Commissioner, Prevention and Preparedness Services Division, has determined that for the one-month reporting period there will be no fiscal implications to state government as a result of enforcing or administering the section as proposed. This is a pilot program that will be conducted for one month instead of 12 months as previously proposed.

There are fiscal implications for local health authorities. The program will be conducted by the San Antonio Metropolitan Health District, Brazos County Health Department, and the Amarillo Bi-City-County Health District, and are aware of the resources needed to conduct the program. Each local health authority will need various staffing resources to: (1) implement surveillance; (2) collect disease reports; (3) manage a database; (4) interview patients; (5) review medical records; and (6) prepare a summary report. All three local health authorities will use graduate or medical school students to conduct the aspects of the program. Brazos County estimates a cost of $400 for the one-month program reporting period. Amarillo Bi-City-County Health District estimates approximately $2,000 to conduct the one-month program reporting period. San Antonio Metropolitan Health District estimates a cost of about $8,000 to conduct the one-month program reporting period.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT STATEMENT

Dr. Valadez has also determined that there will be an effect on small businesses or micro-businesses required to comply with the section. It is estimated that laboratories and physician offices will make 800 MRSA reports during the one month study. From prior experiences, most (95%) of MRSA reports will be made by hospital and clinical laboratories, which are not small or micro-businesses. Only 5%, or 40 reports a year will be made from micro-businesses. These small businesses would consist of physician offices or physician group practices. Assuming each practice has 1 or 2 MRSA infections to report, the possible cost per practice would be between $2.08 and $4.16.

The primary reporters of MRSA would be physicians in the following practices: family practice, general practice, internal medicine, infectious diseases and pediatrics. From data provided by the Texas Medical Board, 1,713 physicians in these practices are licensed in these four counties. Neither the Texas Medical Association nor the Texas Workforce Commission have data to estimate the number of small or micro-businesses that would consist of these 1,713 physicians in the four counties comprising the three local health authorities

The cost is related to medical providers and laboratory staff making a report by telephone or fax to the local health authority. Approximately 800 reports would be made during the study period. Health district staff estimate that a person takes approximately five minutes to make a disease report. From their experiences, health district staff believe nurses in medical offices and hospitals are the primary reporters. Nurses earn an average of $25 per hour. A single report would cost a business the amount of $2.08. The estimated total cost to make approximately 800 disease reports would be $1,664.

Physician offices and clinical laboratories will be required to report patients with MRSA infections. It is estimated that 800 MRSA infections will be reported during the one-month study in Bexar, Brazos, Potter, and Randall counties. Most of the reports will be made by hospital and clinical laboratories that are not small or micro-businesses. However, some physician offices may be small businesses or micro-businesses. Office staff will need to telephone, fax or mail laboratory reports. There is some cost in making the reports.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rule during the comment period, which the commission has reviewed and accepts.

Comments were received from six individuals. Two of the individuals represented Association for Professionals in Infection Control and Epidemiology (APIC) chapters, two were infection control practitioners at hospitals within one of the three counties and one was staff member of the Texas Hospital Association. The sixth individual was a physician in private practice. Generally, the commenters were against the rule because of the economic burden for hospital laboratories and hospital staff to comply with reporting. However, the commenters provided recommendations for changes that lessen the economic burden of reporting and the department reduced the reporting time period.

Comment: One commenter questioned the estimated number of MRSA infections used in the fiscal impact statement as being too low.

Response: The commission disagrees because the estimated number of MRSA infections was based on rates reported in published reports. These rates were applied to the county populations to determine the estimated number of possible MRSA infections that may be reported. No change was made to the rule as a result of this comment.

Comment: Three commenters requested that goals and objectives be established for the proposed rule.

Response: The commission disagrees because the goals of the pilot program are created by the legislation, Health and Safety Code, §81.0445. The pilot program must track the prevalence of MRSA, study the cost and feasibility of expanding the list of reportable diseases to include MRSA, and analyze findings regard-

ing the sources and possible prevention of MRSA. No change was made to the rule as a result of this comment.

Comment: One commenter stated that the rule is poorly written, vague and lacks specificity.

Response: The commission disagrees and believes the rule is clearly written and specific. No change was made to the rule as a result of this comment.

Comment: One commenter expressed concerns whether any useful information will be obtained.

Response: The commission disagrees because the information obtained will provide an estimate of the occurrence of MRSA in the population. No change was made to the rule as a result of this comment.

Comment: Two commenters recommended input be obtained in the development of the rule from pediatricians, family practitioners, internal medical physicians, general practitioners, infection control professionals and from national professional organizations such as American Medical Association and the Society for Healthcare Epidemiology of America.

Response: The commission disagrees because the rule was developed with input from the local health authorities, who are licensed physicians in Texas and members of the American Medical Association and from a member of the Society for Healthcare Epidemiology of America. Additional input was obtained from several epidemiologists who have experience in conducting epidemiologic studies similar to the pilot program. No change was made to the rule as a result of this comment.

Comment: Two commenters suggested a point prevalence study instead of a study over 12 months.

Response: The commission agrees and has amended the rule to reflect a one-month prevalence study instead of the 12-month period in §97.14(e).

Comment: Three commenters requested further clarifications for the definition of MRSA and suggested reviewing the Centers for Disease Control and Prevention website.

Response: The commission disagrees because several tests to determine methicillin resistance are available. The Centers for Disease Control and Prevention's website notes using methods recommended by the Clinical and Laboratory Standards Institute for determining methicillin resistance. The proposed rule states that MRSA is defined by the Clinical and Laboratory Standards Institute for the specific test performed in the laboratory. No change was made to the rule as a result of this comment.

Comment: Two commenters suggested reporting MRSA by site of culture instead of infection. Laboratories do not routinely have knowledge of a patient's signs and symptoms to determine infections versus colonization. Another commenter questioned whether MRSA identified at each body site is reportable or not. In addition, two commenters questioned whether only newly diagnosed MRSA infections should be reported.

Response: The commission disagrees and has attempted to eliminate confusion about what cultures or infections shall be reported. All positive cultures should be reported, regardless of site and regardless of whether the patient is colonized or has an infection. No change was made to the rule as a result of this comment.

Comment: One commenter questioned whether only community-acquired infections are to be reported or whether only healthcare-acquired infections are to be reported.

Response: The commission disagrees because to estimate the prevalence of MRSA in the county population all MRSA positive cultures must be reported regardless of where the infections have been acquired. No change was made to the rule as a result of this comment.

Comment: One commenter questioned whether history of prior MRSA infections should be collected and reported.

Response: The commission disagrees because the information that shall be reported for each person does not include prior history of a MRSA infection. No change was made to the rule as a result of this comment.

Comment: One commenter requested exempting hospital-based laboratory results performed for healthcare providers when a patient is not admitted to the hospital. The required patient specific data is not available to the laboratory.

Response: The commission disagrees. Exempting reports when a patient is not admitted to a hospital will not provide the data necessary to estimate the prevalence of MRSA in the community. The local health authorities will coordinate with medical providers to collect specific data about the patient. The department recognizes that hospital laboratories may not have all the specific patient data. No change was made to the rule as a result of this comment.

Comment: Three commenters recommended that the proposed rule address culture findings that result in the identification of multiple organisms.

Response: The commission disagrees because the proposed rule states that patients with a positive culture of MRSA shall be reported. Clarification to address whether the culture also has MRSA or other bacteria such as *Staphylococcus epidermis* is not necessary. The department believes that rules attempting to address culture findings that include other organisms would result in greater confusion about what to report. No change was made to the rule as a result of this comment.

Comment: One commenter questioned whether ICD-9 codes are specific for reporting.

Response: The commission disagrees because ICD-9 codes are not specific for reporting. All positive MRSA cultures shall be reported. No change was made to the rule as a result of this comment.

Comment: Five commenters recommended that MRSA colonization be defined and clarified as a component not requiring reporting.

Response: The commission disagrees because all MRSA cultures shall be reported regardless of whether the patient is colonized or has an infection. No change was made to the rule as a result of this comment.

Comment: Two commenters recommended that the address of the patient be clarified.

Response: The commission disagrees because the patient's address to be reported is the primary residence of the patient. The department feels that to define the patient's address is unnecessary. No change was made to the rule as a result of this comment.

Comment: One commenter recommended that the rule clarifies whether MRSA infections should only be reported once for each patient during the reporting period.

Response: The commission disagrees because all MRSA cultures shall be reported. The department recognizes that patients may have multiple cultures during the reporting period. Understanding the burden of MRSA reporting for the local health authorities and the laboratories requires the reporting of all cultures for this pilot program. No change was made to the rule as a result of this comment.

Comment: Two commenters requested clarification regarding categories of who is required to report, e.g. can a nurse practitioner report or must it be a physician.

Response: The commission agrees and has added §97.14(c)(4) to clarify that other persons may report.

Comment: One commenter questioned whether a long-term care facility is required to report.

Response: The commission disagrees because health care facilities are not required to report. The administrative officers of a clinical or hospital laboratory or physicians are required to report. No change was made to the rule as a result of this comment.

Comment: Three commenters stated concerns that clinical laboratories do not receive the required patient elements.

Response: The commission disagrees but recognizes that the clinical laboratories may not receive all the required patient elements. During the pilot program the local health authorities will contact the patient's physician to collect information about the patient's illness. No change was made to the rule as a result of this comment.

Comment: One commenter recommended clarification of what additional information shall also be reported.

Response: The commission believes the commenter may be referring to §97.14(d)(2). This paragraph allows the local health authorities conducting the pilot program to collect additional information not specifically defined in the rule should it become necessary to determine possible risk factors identified while the program is being conducted. No change was made to the rule as a result of this comment.

Comment: One commenter recommended clarification of whether a specific form will be used to report MRSA infection and whether reporting can be by fax, mail, or email. Another commenter recommended specifying acceptable methods for delivery of the report and specifying the form of the report.

Response: The local health authorities will use a common form for reporting and communicating to the clinical and hospital laboratories and physicians the mode of reporting. No change was made to the rule as a result of this comment.

Comment: Two commenters recommended changing the requirement to report within five days to 10 days of identification, not including weekends and holidays. One comment recommended reporting to be within one week. Two commenters recommended that the requirement to report within five working days not include weekends and holidays.

Response: The commission agrees that reporting within five days maybe burdensome. Section 97.14(e) has been changed to require reporting within seven calendar days.

Comment: Four commenters expressed concerns about the cost of compliance. The commenters felt the economic impact statement of the proposed rule does not take into account all the costs associated with compliance, particularly, the time for hospital or medical clinic staff to review a patient medical record to determine infection versus colonization.

Response: The commission agrees and has changed the time period to conduct the pilot program from 12 months to one month in §97.14(e). Reducing the time to a one-month period will reduce the costs associated with compliance.

Comment: Three commenters recommended that a standardized software tool be developed to facilitate compliance with the proposed rule and avoid duplicate reporting.

Response: The commission disagrees because the pilot program will be conducted for one month. Development of a specific software tool for this pilot program is not justifiable. One of the purposes of this pilot program is to better understand the burden of MRSA reporting on medical providers and local health authorities. Development of reporting software may be a recommendation of the pilot program. No change was made to the rule as a result of this comment.

Comment: One commenter noted that penalties for non-reporting have not been specified and that facilities may decide not to participate due to the expense. Two commenters stated that facilities and physicians may decide not to participate due to the expense.

Response: The commission disagrees because penalties for failure to report are noted in §97.2(g) of this title (relating to Who Shall Report). Failure to report a notifiable condition is a Class B misdemeanor under the Texas Health and Safety Code, §81.049. The department has made efforts to minimize the burden and expense on clinical or hospital laboratories and physicians. No change was made to the rule as a result of this comment.

Comment: Three commenters stated concerns of the environmental impact related to significant use of paper, toner cartridge and fax machines that will be used during reporting.

Response: The commission agrees that paper and toner may be used for reporting. Possible environmental impact has been reduced by decreasing the reporting period from 12 months to one month.

Comment: Three commenters stated concerns that local health department resources for managing serious infectious diseases in the community will be diminished.

Response: Three local health authorities have agreed to conduct the pilot program. The authorities are aware of the resources needed to manage and conduct the pilot program.

Comment: Four commenters recommended that the paragraph in §97.14(d)(2), "Additional information necessary to determine and analyze the source and possible prevention of MRSA shall also be reported if requested," be defined more clearly or deleted.

Response: The commission disagrees because the paragraph allows the local health authorities conducting the pilot program to collect additional information not specifically defined in the rule should it become necessary to determine possible risk factors identified while the program is being conducted. No change was made to the rule as a result of this comment.

Comment: One commenter noted that the pilot program focusing on patients with infection overlooks those people who are colonized and capable of transmitting the organism.

Response: The commission disagrees because the pilot program will be collecting data on all positive cultures for MRSA. The program will collect information on the source of the specimen, such as the nares (medical term for nostrils) that would suggest colonization. No change was made to the rule as a result of this comment.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The new section is authorized by Health and Safety Code, §81.004, which gives the commissioner of the department general statewide responsibility for the administration of the Communicable Disease Act and authorizes the adoption of rules necessary for its effective administration and implementation; Health and Safety Code, §81.0445, which requires the Executive Commissioner of the Health and Human Services Commission to develop rules to establish a pilot program to research and implement procedures for reporting cases of MRSA; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of the Health and Safety Code, Chapter 1001.

§97.14. Methicillin-resistant Staphylococcus aureus (MRSA) reporting.

(a) Purpose. The Communicable Disease Prevention and Control Act, Health and Safety Code, §81.0445, requires the establishment of a pilot program for the reporting of methicillin-resistant *Staphylococcus aureus*.

(b) Definitions. For the purposes of this section, the following words and terms shall have the following meanings.

(1) Methicillin-resistant *Staphylococcus aureus* (MSRA)--*Staphylococcus aureus* for which resistance to oxacillin or cefoxitin is detected as defined by the Clinical and Laboratory Standards Institute, Wayne, Pennsylvania, for the specific test performed in the laboratory.

(2) Methicillin-resistant *Staphylococcus aureus* infection--Invasion and multiplication of MRSA in a bodily part or tissue, which produces cell or tissue injury.

(c) Where to report. The pilot program is being conducted in Bexar, Brazos, Potter and Randall counties only. These jurisdictions meet the requirements of Health and Safety Code, §81.0445(b).

(1) An administrative officer of a clinical or hospital laboratory or physicians located in Bexar County shall report MRSA to the Bexar County Health Authority.

(2) An administrative officer of a clinical or hospital laboratory or physicians located in Potter County or Randall County shall report MRSA to the Health Authority appointed by the Amarillo Bi-City-County Public Health District.

(3) An administrative officer of a clinical or hospital laboratory or physicians located in Brazos County shall report MRSA to the Brazos County Health Authority.

(4) An administrative officer of a clinical or hospital laboratory or physician who can assure that a designated or appointed person from the laboratory or clinic or office is regularly reporting every culture of methicillin-resistant *Staphylococcus aureus* does not have to submit a duplicate report.

(d) Reportable information requirements.

(1) The information that shall be reported for each person with laboratory confirmation of an infection caused by methicillin-resistant *Staphylococcus aureus* is as follows: patient name, address, telephone number, age, date of birth, sex, race and ethnicity, date of culture, site of culture, drug susceptibility results, and physician name, address, and telephone number.

(2) Additional information necessary to determine and analyze the source and possible prevention of MRSA shall also be reported if requested.

(e) When to report. Any clinical specimen collected on March 1, 2009 through March 31, 2009 that is positive for methicillin-resistant *Staphylococcus aureus* shall be reported within seven calendar days of identification.

(f) This section expires September 1, 2009.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 29, 2008.

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Lisa Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: March 28, 2008
For further information, please call: (512) 458-7111, x6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 37. FINANCIAL ASSURANCE

SUBCHAPTER X. FINANCIAL ASSURANCE REQUIREMENTS FOR BRINE EVAPORATION PITS

30 TAC §§37.9245, 37.9250, 37.9255, 37.9260, 37.9265

The Texas Commission on Environmental Quality (commission) adopts new §§37.9245, 37.9250, 37.9255, 37.9260, and 37.9265 *without changes* to the text as proposed in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4484) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Senate Bill (SB) 1037, 80th Legislature, 2007, amended Subchapter D, Chapter 26 of the Texas Water Code (TWC), by adding §26.132. SB 1037 requires the commission to develop

standards to prevent the contamination of ground and surface water resources from brine evaporation pit operations. SB 1037 requires an owner or operator to provide financial assurance to ensure satisfactory facility closure and obtain pollution liability insurance covering bodily injury and property damage to third parties.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes the addition of adopted new 30 TAC Chapter 218, Brine Evaporation Pits.

SECTION BY SECTION DISCUSSION

The commission adopts new Chapter 37, Subchapter X, Financial Assurance Requirements for Brine Evaporation Pits, to describe the financial assurance requirements for brine evaporation pits required by §218.35, Financial Assurance. Adopted new §37.9245, Applicability, indicates who is subject to the financial assurance requirements of the new subchapter.

Adopted new §37.9250, Definitions, references Subchapter A of Chapter 37 as well as Chapter 218. Since mechanism wordings all refer to the term "facility" rather than "brine evaporation pits" as used in Chapter 218, this section clarifies that the two terms shall be synonymous for financial assurance purposes. This is not meant to affect or change usage of the term "brine evaporation pits" in Chapter 218.

Adopted new §37.9255, Submission of Documents, requires that financial assurance mechanisms be submitted prior to permit issuance for new facilities or within 180 days of the effective date of the rules for existing facilities. For either case, the executive director may provide written permission for an alternate deadline at his discretion.

Adopted new §37.9260, Financial Assurance Requirements for Closure and Post Closure of Brine Evaporation Pits, subsection (a) specifies the requirements and associated framework for the financial assurance mechanisms for closure and post closure. Since these requirements are common to many of the financial assurance programs, cross reference is made to existing Subchapters A - D. The section also specifies that §37.31 does not apply to brine evaporation pit owners and operators since some brine evaporation pits are already in existence and could not comply with a requirement to provide a mechanism 60 days prior to receipt of waste. Section 37.9255 provides the submittal timing requirements for brine evaporation pits. Adopted new §37.9255(b) establishes the financial assurance mechanisms that will be allowed by cross referencing to existing Subchapter C. Pay in trusts are not deemed an acceptable financial assurance mechanism since payment into a trust over time would not assure that financial assurance is adequate to ensure satisfactory closure of the brine evaporation pit as required by SB 1037. Only after the trust was fully funded could closure be assured by adequate funding.

Adopted new §37.9265, Third Party Pollution Liability Requirements for Brine Evaporation Pits, addresses the requirements for third party pollution liability insurance coverage. Subsection (a) describes the minimum required amount of insurance coverage, the minimum standards for an insurance company providing the coverage and establishes what constitutes proof of coverage. Subsection (b) requires that if an endorsement rather than a certificate of insurance is chosen to provide the proof, then the insurance policy must be amended by the Endorsement of Liability. Finally, subsection (c) makes certain definitions in §37.402 regarding the terms of liability insurance applicable to brine evaporation pit owners providing third party pollution liability insurance. Section 37.411 provides that the executive director may amend the amount of third party pollution liability insurance based on the risk associated with each individual brine evaporation pit.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of "major environmental rule" as defined in the statute.

A "major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules are part of a larger proposal to implement rules for the regulation of brine evaporation pits. The corresponding rulemaking is published in this issue of the *Texas Register,* adopted Chapter 218, Brine Evaporation Pits. The specific intent of the adopted rules in Chapter 37 is to prescribe the manner in which an owner or operator of a brine evaporation pit may meet the third party liability pollution insurance and financial assurance requirements under adopted Chapter 218. Furthermore, the adopted rules are administrative in nature and will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that the adopted rulemaking does not meet the definition of a major environmental rule.

In addition to the fact that the adopted rulemaking does not meet the definition of a major environmental rule, it is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Subsection (a) applies only to a state agency's adoption of a major environmental rule that: (1) exceeds a standard set by federal law, unless the rule is specifically required by state law; (2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) was adopted solely under the general powers of the agency instead of under a specific state law.

There are no federal standards governing the operation of commercial brine evaporation pits. Second, the adopted rulemaking is required by SB 1037 and does not exceed its requirements. Third, the adopted rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the adopted rulemaking will be adopted under the express authority of SB 1037, that expressly requires the commission to adopt any rules required to implement the act. Therefore, the rules are not adopted solely under the commission's general powers. The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No public comments were received.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The commission determined that the adopted rulemaking does not constitute a taking. The specific purpose of the adopted new rules is to prescribe the manner in which an owner or operator of a brine evaporation pit may meet the third party liability pollution insurance and financial assurance requirements under adopted Chapter 218. The adopted new rules substantially advance this stated purpose by delineating the insurance company rating, amount of coverage, and documentation required for acceptable third party pollution liability insurance and setting forth various options for obtaining adequate financial assurance.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these adopted rules because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). SB 1037 mandates that the commission adopt rules implementing the act.

Nevertheless, the commission further evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted amendments is to prescribe the manner in which an owner or operator of a brine evaporation pit may meet the third party liability pollution insurance and financial assurance requirements under adopted Chapter 218. The adopted rules substantially advance this stated purpose by delineating the insurance company rating, amount of coverage, and documentation required for acceptable third party pollution liability insurance and setting forth various options for obtaining adequate financial assurance.

Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden, nor restrict or limit the owner's right to real property in addition to reducing its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The adopted rules are administrative in nature, and will not affect private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

The commission offered a public hearing on June 24, 2008. The comment period closed on July 7, 2008. The commission received no oral or written comments.

STATUTORY AUTHORITY

The new rules are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which authorizes the commission to adopt rules as necessary to carry out its powers and duties under the TWC; TWC, §26.011, which authorizes the commission to adopt any rules necessary to protect the quality of water in the state; and TWC, §26.132 as amended by the 80th Legislature, which grants the commission the rulemaking authority to adopt rules requiring the owner or operator of a brine evaporation pit to provide the commission with proof of adequate financial assurance to ensure satisfactory closure of the facility and obtain pollution liability insurance covering bodily injury and property damage to third parties.

The new rules implement TWC, §§5.013, 5.102, 5.103, 5.105, 26.011, and 26.132.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 26, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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CHAPTER 218. BRINE EVAPORATION PITS

30 TAC §§218.1, 218.5, 218.10, 218.15, 218.20, 218.25, 218.30, 218.35, 218.40

The Texas Commission on Environmental Quality (commission) adopts new §§218.1, 218.5, 218.10, 218.15, 218.20, 218.25, 218.30, 218.35, and 218.40 *without changes* to the text as proposed in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4487) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Senate Bill (SB) 1037, 80th Legislature, 2007, amended Chapter 26, Subchapter D of the Texas Water Code (TWC), by adding §26.132. SB 1037 requires the commission to develop standards to prevent the contamination of ground and surface water resources from brine evaporation pit operations. The adopted rule requires an owner or operator of an existing or new brine evaporation pit to obtain a permit to operate the facility. The rulemaking includes specific criteria for the design and construction of the brine evaporation pit and requires that the rules establish location, operation, and maintenance criteria. The rulemaking also requires that the owner or operator of a brine evaporation pit provide financial assurance to ensure satisfactory facility closure and obtain pollution liability insurance covering bodily injury and property damage to third parties. The rulemaking imposes fees necessary to recover the cost of administration and enforcement of the regulations.

The adopted rulemaking is applicable to the process of evaporating groundwater within a surface impoundment or pit to produce concentrated brine water or residual salts, minerals, and other naturally occurring substances present within groundwater. Potential final products from the use of a brine evaporation pit in-

clude concentrated magnesium chloride brine, sodium chloride brine, potassium chloride and various other naturally occurring minerals within groundwater. Consequently, there are a multitude of commercial and industrial uses for these products such as ice-melting compounds for roads, agricultural fertilizer, and chemical manufacturing.

Although the commission regulates the disposal of certain wastes via evaporation within surface impoundments, the commission's current regulations do not address the commercial production of a product by evaporation within a surface impoundment. This production activity is not associated with oil and gas production and therefore is not regulated under the authority of the Railroad Commission of Texas (RRC). An unregulated brine evaporation pit operation has the potential to cause significant impacts to water quality due to the high chloride content of the brine and mineral products. The adopted rule implements SB 1037 by establishing the safeguards necessary to protect ground and surface water resources.

A corresponding rulemaking is published in this issue of the *Texas Register* that includes the addition of adopted new 30 TAC Chapter 37, Subchapter X, Financial Assurance.

SECTION BY SECTION DISCUSSION

Adopted new §218.1, Definitions, defines the terms used within the subchapter. Definitions for the following terms are consistent with definitions found in SB 1037: "licensed engineer" and "evaporation pit." Although the definition of an evaporation pit is consistent with the definition found in SB 1037, the term "evaporation pit" has been modified to "brine evaporation pit" to clarify the applicability of SB 1037 to a surface impoundment used for the production of brine and minerals by evaporation. The definition also shows that the rule is not applicable to surface impoundments used for the disposal of certain wastes by evaporation which are currently regulated by existing commission rules.

The following definitions were added to those contained in SB 1037: brine product, facility, incidental storm water, owner, and operator. The definition of "brine product" in adopted new §218.1(2) is based upon language provided by the SB 1037. Adopted new §218.1(3) defines "facility" to encompass all components of the brine production evaporation operations that will be required to be addressed within the facility closure plan. Adopted new §218.1(4) defines "incidental storm water" to clarify the intent of the SB 1037 to prohibit storm water runoff from the site from entering the evaporation pit and causing an unauthorized discharge. Rainfall falling directly into the pit and collected storm water runoff from brine production areas are authorized for placement within the pit. Adopted new §218.1(6) and (7) define operator and owner, respectively. The definitions are modified from the definitions included in 30 TAC §305.2 to clarify responsibility consistent with the scope of SB 1037.

Adopted new §218.5, Purpose, identifies the intent of the rule by reiterating the objectives of the SB 1037 to: prohibit the occurrence of a discharge from a brine evaporation pit into or adjacent to water in the state; establishing specific location, operation and design criteria to prevent contamination of surface and groundwater resources during normal operation and failure; require financial assurance to ensure proper closure and post closure care of the facility; and require evidence of pollution liability insurance coverage of bodily injury and property damage to third parties.

Adopted new §218.10, Applicability, clarifies which type of operation will be subject to the adopted rule. The determination is based primarily upon the definition of an evaporation pit as provided by SB 1037. The definition specifies that the rule governs the commercial production of brine, salts, minerals and naturally occurring substances. The term "commercial" is consistent with SB 1037's explicit exclusion of brine operations associated with oil and gas production. Brine produced during oil and gas exploration is process waste and not a commercial final product. Further, activities associated with oil and gas production are regulated under the authority of the RRC in accordance with memorandum of understanding (MOU) between the RRC and the commission. The adopted rule is consistent with the MOU. Further, the definition of an evaporation pit provided by SB 1037 identifies groundwater and incidental storm water as the applicable source waters for evaporation. Therefore, the rule is not applicable to the evaporation of source waters other than groundwater, such as seawater. SB 1037 also requires the rule be applicable to both existing and new brine evaporation pits, regardless of the date the operation began.

Adopted new §218.15, Authorization, requires an owner or operator of a brine evaporation pit to apply for and obtain a permit from the commission. The commission is proposing authorization of brine evaporation pits under individual wastewater permits issued in accordance with the commission's existing permit application and processing regulations. Under the individual wastewater permit application process, the applicant will be subject to public notice requirements. This process provides the public with the opportunity to comment and request a contested case hearing on a permit application. Individual wastewater permits issued in accordance with the rule will prohibit discharge from a brine evaporation pit into or adjacent to water in the state. An owner or operator of a new brine evaporation pit operation subject to the rule must obtain coverage under an individual wastewater permit prior to construction of the facility. An owner or operator of an existing brine evaporation pit operation must submit an application for an individual wastewater permit within 180 days of the effective date of the rule.

Adopted new §218.20, Surface and Groundwater Protection, includes specific criteria for the location, design, construction, capacity, operation, and maintenance of the brine evaporation pit.

SB 1037 requires the rule govern the location of a brine evaporation pit so that a failure of the pit or unauthorized discharge from the pit would not result in an adverse impact on water in the state. Therefore, the rule includes distance requirements from public and private drinking water wells and more stringent storm water controls for any facility located within the 100-year flood plain. More stringent storm water control criteria are warranted within the 100-year flood plain to prevent storm water from entering and causing an unauthorized discharge from a brine evaporation pit.

SB 1037 requires that the liner meet standards at least as stringent as the commission's existing regulations for a Type I landfill managing Class 1 industrial solid waste. Therefore, the rule includes identical composite liner system criteria as required within the landfill regulations at 30 TAC Chapter 330. The liner must consist of an upper geomembrane liner and lower compacted soil liner. The evaporation pit liner must be designed and certified by a licensed engineer. The rule also includes the option for approval of an alternative liner.

The rule includes operational requirements to prevent the discharge of contaminated storm water from the facility. Product handling areas shall be adequately curbed and sloped to allow for containment of runoff within a storm water retention pond

and recycled to the brine evaporation pit. Storm water retention pond liner criteria are included to prevent groundwater pollution and the migration of wastewater off-site. The owner or operator shall maintain a two-foot freeboard within the evaporation pit at all times.

The rule requires that the owner or operator shall ensure that the facility is properly maintained. The owner or operator shall keep records of examination of liners and storm water controls on-site for a period of at least five years. A licensed engineer shall review the records and conduct a site evaluation on a five-year basis or following a permit amendment due to a significant change in the facility or process.

Adopted new §218.25, Closure and Post Closure Care, delineates the requirements for closure and post closure care of the facility. Although SB 1037 requires closure and the demonstration of financial assurance for closure it does not explicitly require post closure care. However, the intent of SB 1037 is to prevent impacts to groundwater and surface water both during and following closure. Therefore, the rule includes two procedures for closure. Adopted new §218.25(a)(1) requires removal and off-site disposal of all waste and contaminated media. Following removal and decontamination of all wastes, the site must be certified as closed by a licensed engineer in accordance with the approved closure plan.

Adopted new §218.25(a)(2) requires all waste and contaminated media to be enclosed within the lined brine evaporation pit. The rule includes criteria for the design and construction of the cover. Post closure requirements are applicable under adopted new §218.25(b) when waste or contaminated media are left in place at closure. Post closure care requires long term maintenance of the cover. Additional requirements such as groundwater monitoring may be included if determined to be necessary by the executive director.

Adopted new §218.30, Cost Estimate for Closure and Post Closure, requires the owner or operator to estimate closure costs based upon the requirements within §218.25(b) procedure for closure and post closure requirements. This is consistent with the commission's current cost estimate procedures for hazardous waste surface impoundments.

Adopted new §218.35, Financial Assurance, requires an owner or operator to provide proof of financial assurance to ensure proper closure and post closure care of the facility and proof of liability insurance covering bodily injury and property damage to third parties in accordance with SB 1037. The rule requires the owner or operator to submit a cost estimate based upon a closure and post closure plan for approval by the executive director prior to permit issuance.

Adopted new §218.40, Fees, requires that the owner or operator shall comply with the applicable fee requirements established for individual wastewater permits within 30 TAC Chapter 21. This meets the statutory requirement that the commission impose fees necessary to recover the costs of administering and enforcing the rule.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because, although it does meet the definition of "major environmental rule" as defined in Texas Government Code, §2001.0225 and may adversely affect a sector of the economy, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

A "major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the adopted rulemaking is to protect ground and surface water from the risk of contamination posed by the improper operation of commercial evaporation pits. Also, as noted in the SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT and SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS sections of the FISCAL NOTE in the proposed preamble, this rulemaking will increase operations and compliance costs for small or micro-businesses that own or operate brine evaporation pits. The FISCAL NOTE found only one business that would be affected by this rule. The commission concludes that the adopted rulemaking meets the definition of a major environmental rule.

Although the adopted rulemaking meets the definition of a major environmental rule, it is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). This section applies only to a state agency's adoption of a major environmental rule that: (1) exceeds a standard set by federal law, unless the rule is specifically required by state law; (2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) was adopted solely under the general powers of the agency instead of under a specific state law.

There are no federal standards governing the operation of commercial brine evaporation pits. Second, the adopted rulemaking is required by SB 1037 and does not exceed its requirements. Third, the adopted rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the adopted rulemaking will be adopted under the express authority of SB 1037, that expressly requires the commission to adopt any rules required to implement the act. Therefore, the rules are not adopted solely under the commission's general powers. The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No public comments were received.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The commission determined that the adopted rulemaking does not constitute a taking. The specific purpose of the adopted rulemaking is to protect ground and surface water from the risk of contamination posed by the improper operation of brine evaporation pits. This rulemaking substantially advances this stated purpose by requiring an owner or operator of an existing or new brine evaporation pit to obtain a permit to operate the facility, provide financial assurance to ensure the satisfactory closure of the facility, obtain pollution liability insurance covering bodily injury and property damage to third

parties, and comply with specific design, construction, location, operation, maintenance, and closure requirements.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these adopted rules because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). SB 1037 mandates that the commission adopt rules implementing the act.

Nevertheless, the commission further evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rulemaking is to protect ground and surface water from the risk of contamination posed by the improper operation of brine evaporation pits. This rulemaking substantially advances this stated purpose by requiring an owner or operator of an existing or new brine evaporation pit to obtain a permit to operate the facility, provide financial assurance to ensure the satisfactory closure of the facility, obtain pollution liability insurance covering bodily injury and property damage to third parties, and comply with specific design, construction, location, operation, maintenance, and closure requirements.

Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden, nor restrict or limit the owner's right to real property in addition to reducing its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Requiring an owner or operator of a brine evaporation pit to obtain a permit, provide financial assurance, obtain pollution liability insurance, and comply with specific design, construction, location, operation, maintenance, and closure requirements will not affect private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

The commission offered a public hearing on June 24, 2008. The comment period closed on July 7, 2008. The commission received no oral or written comments.

STATUTORY AUTHORITY

The new rules are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which authorizes the commission to adopt rules as necessary to carry out its powers and duties under the TWC; TWC, §26.011, which authorizes the commission to adopt any rules necessary to protect the quality of water in the state; TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state; TWC, §26.132 as amended by the 80th Legislature, which grants the commission the rulemaking authority to adopt rules to protect surface water and groundwater quality from the risks presented by commercial brine evaporation pits.

The new rules implement TWC, §§5.013, 5.102, 5.103, 5.105, 26.011, 26.027, and 26.132.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 26, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: June 6, 2008
For further information, please call: (512) 239-0177

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CHAPTER 290. PUBLIC DRINKING WATER SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

30 TAC §§290.44, 290.46, 290.47

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§290.44, 290.46, and 290.47. Sections 290.44 and 290.47 are adopted *without changes* as published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3552) and will not be republished. Section 290.46 is adopted *with changes* to the proposed text.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purposes of the adopted amendments are to reflect changes to the Texas Health and Safety Code (THSC), §341.042 and §341.0357 made during the 80th Legislative Session, 2007, in §11 of House Bill (HB) 4, HB 1391, and §2.28 of Senate Bill (SB) 3.

HB 4, §11 and SB 3, §2.28 amend THSC, §341.042, Standards for Harvested Rainwater, by requiring the commission to establish rules for structures that are connected to a public water supply system and have a rainwater harvesting system for indoor use. The structure must have appropriate cross-connection safeguards, and the rainwater harvesting system may be used only for nonpotable indoor purposes. The commission's standards and rules adopted under THSC, Chapter 341 do not apply to a person who harvests rainwater for domestic use and whose property is not connected to a public drinking water supply system. These amendments do not change the commission's existing rules in §290.44(h) and §290.47(i) regarding backflow prevention.

HB 1391 amends THSC, Chapter 341, Subchapter C by adding §341.0357, Public Safety Standards. This bill requires that the regulatory authority for a public utility, as defined in Texas Water Code (TWC), §13.002(23), serving a residential area adopt public safety standards to maintain sufficient water pressure to

fire hydrants in residential areas in a municipality with a population of 1,000,000 or more. This section requires the commission to assess residential areas in a municipality with a population of 1,000,000 or more to ensure that public safety standards are adopted by the regulatory authority for the area and that all public utilities serving the residential areas are complying with the standards required by THSC, §341.0357. The commission is proposing a minimum standard. The standard adopted by the local regulatory authority must meet or exceed this standard. The commission will require out-of-compliance regulatory authorities and public utilities to comply within a reasonable time using its existing enforcement rules and policies.

SECTION BY SECTION DISCUSSION

The commission adopts §290.44(j) to implement THSC, §341.042, as amended by HB 4, §11 and SB 3, §2.28, 80th Legislative Session, 2007, to establish rules for structures that are connected to a public water supply system and have a rainwater harvesting system for indoor use, including that the rainwater harvesting system may be used only for nonpotable indoor purposes.

The commission adopts §290.46(x) to meet the new public safety requirements from HB 1391. Adopted subsection (x) includes the requirement that the regulatory authority for a public utility adopt standards for maintaining sufficient water pressure for service to fire hydrants adequate to protect public safety. In subsection (x), the commission also adopts definitions for "regulatory authority," "public utility," and "residential area." These definitions are from TWC, §13.002(18) and (23) and THSC, §341.0357, respectively.

In accordance with HB 1391, subsection (x) only applies to municipalities with a population of 1,000,000 or more. The public safety standards only apply to "public utilities" as defined by TWC, §13.002 in residential areas inside the corporate limits of the municipality. The standards are designed to provide adequate flow to fire hydrants. The adopted rule will require public utilities that do have fire hydrants to maintain sufficient water pressure adequate to protect public safety. The commission's adopted rule does not require a public utility to install fire hydrants if it currently does not have fire hydrants. However, a municipality can require the installation of fire hydrants under its own local authority. Resulting from comments received, the commission amended §290.46(x)(2) to demonstrate the duty imposed upon public utilities to deliver service to their fire hydrants during emergencies.

The commission's adopted rule sets a minimum standard for service to fire hydrants so that the flow is at least 250 gallons per minute (gpm) for a minimum period of two hours while maintaining a minimum pressure of 20 pounds per square inch (psi) throughout the distribution system during emergencies such as fire fighting. The commission intends to enforce this standard on public utilities to which it applies should the applicable local regulatory authority fail to adopt standards. The commission will also use that standard as the basis for determining whether local standards are inadequate under THSC, §341.0357(d). If a local regulatory authority adopts its own standard, the commission will enforce that standard on public utilities to which it applies.

The standard of 250 gpm for a minimum period of two hours while maintaining a minimum pressure of 20 psi comes from legislation, TCEQ rules, and insurance standards. HB 1717, 80th Legislative Session, 2007, defines a fire hydrant as non-functioning if it pumps less than 250 gpm. Existing §290.46(r) requires a public water system to provide a minimum pressure of 20 psi during emergencies such as firefighting. The Insurance Services Office (ISO), which rates municipality's fire systems for insurance purposes, for a public protection classification of eight or better has a minimum standard of 250 gpm, with a minimum residual pressure of 20 psi, for a period of two hours.

The commission adopts the figure in §290.47(i) in response to THSC, §341.042, as amended by HB 4, §11 and SB 3, §2.28, 80th Legislative Session, 2007, to show that any rainwater harvesting system connected to a public water system is a connection that constitutes a potential health hazard and requires a reduced-pressure principle backflow assembly or an air gap. This requirement already applies to rainwater harvesting systems under the commission's current rules.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225 or does not meet the applicability criteria. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to incorporate changes made by HBs 4 and 1391 and SB 3 during the 80th Legislative Session, 2007, to THSC, §341.042 and §341.0357 (relating to Public Safety Standards). THSC, §341.0357, enacted by HB 1391, requires that the regulatory authority for a public utility serving a residential area adopt public safety standards to maintain sufficient water pressure to fire hydrants in residential areas in a municipality with a population of 1,000,000 or more. The specific intent of the adopted rulemaking related to this statute is to amend the commission's rules to incorporate recent legislative changes that reduce risks to human safety but that are not intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, this adopted rulemaking does not meet the definition of a "major environmental rule."

THSC, §341.042, amended by HB 4 and SB 3, requires structures that are connected to a public water supply system and have a rainwater harvesting system for indoor use to have cross-connection safeguards, and the harvesting system may be used only for nonpotable indoor purposes. The intent of the rules adopted under and in response to this statute is to reduce risks to human health from environmental exposure. However, Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This portion of the rulemaking does not meet any of these four applicability criteria because it: (1) does not involve any standard set by federal law; (2) does not exceed the requirements of THSC, §341.042 or any other state law; (3) does not exceed a requirement of a delegation agreement or contract be-

tween the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather specifically under THSC, §341.042, which requires the commission to adopt rules to implement the statute, and THSC, §341.0315, which requires the commission to ensure that public drinking water supply systems supply safe drinking water. Therefore, these adopted rules do not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these rules is to reflect changes to THSC, §341.042 and §341.0357 made during the 80th Legislative Session, 2007. The adopted rules will substantially advance this stated purpose by clarifying current rules and incorporating the requirements found in these statutes into the commission's rules.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these adopted rules because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The commission is the regulatory agency for statutes found in THSC, Subchapter C, which contains §341.042 and §341.0357. The commission's analysis also indicates that Texas Government Code, Chapter 2007 does not apply to these adopted rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. The adopted rules are designed to protect public drinking water systems from contamination and ensure that certain fire hydrants receive proper water pressure without imposing unnecessary burdens. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13).

Nevertheless, the commission further evaluated these adopted rules and performed an assessment of whether they constitute a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, these rules require compliance with state statutes to protect public drinking water from contamination and provide sufficient water pressure for fire protection without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the adopted rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the consistency of this rulemaking with the coastal management program.

PUBLIC COMMENT

The commission held a public hearing for this rule on May 29, 2008, in Austin, Texas. The public comment period for this rulemaking closed on June 2, 2008. The commission received comments from Bac-Flo Unlimited, Inc. (Bac-Flo); Bickerstaff, Heath, Delgado, Acosta, LLP, on behalf of the City of Houston (Houston); Innovative Water Solutions, LLC (Innovative Water); Preserve Our Water (POW); Trinity Rainwater, LLC (Trinity Rainwater); and one individual.

One individual and three commenters disagreed with the proposed rule restricting the use of harvested rainwater for indoor use to non-potable purposes. One individual and one commenter supported the commission's backflow prevention safeguards to address harvested rainwater usage. One commenter suggested multiple changes to the commission's proposed fire flow rule and the rule's preamble.

RESPONSE TO COMMENTS

Background and Summary of the Factual Basis for Proposed Rules

Houston commented that they do not agree with the following statement used in the proposal preamble under the discussion on HB 1391 "{t}he appropriate standard will be determined by the governing body of the local regulatory authority on a site-specific basis dependent on the public water supply system design," as this statement could be misinterpreted as allowing the regulatory authority to deviate from the minimum standard adopted by the commission and the regulatory authority. Houston requests that the commission omit the phrase "site-specific basis" from the preamble of the adopted rule.

The commission agrees that, even though a municipality could write an ordinance to allow for site-specific standards, this sentence could be misleading. The commission removed this sentence from the preamble in response to this comment.

Houston commented that the last sentence used in the proposal preamble under the discussion on HB 1391 should refer to "regulatory authorities" instead of "regulated authorities."

The commission agrees with this change and revised the preamble in response to this comment.

Section by Section Discussion

Houston commented that in the third paragraph of the Section by Section portion of the preamble, the statement "the commission's proposed rule does not require a municipality to require that public utilities have fire hydrants in residential areas" may unintentionally exempt the systems which are not connected to fire hydrants from the minimum standards. Further, Houston contends that this statement in the preamble could be interpreted by the public utilities to require only the capacity and pressure to sustain service to a fire hydrant but not the delivery of the service. Additionally, Houston commented that the rule may conflict with the legislative intent of ensuring that public utilities serving

residential areas are capable of supporting fire suppression efforts. Houston commented that HB 1717, 80th Legislative Session, 2007, applies to "any device having the appearance of a fire hydrant that is located in a place that an entity responsible for providing fire suppression services in a fire emergency would expect a fire hydrant to typically be located." Houston contends that HB 1717 recognized the existence of hydrant-shaped flush valves and the need to apply minimum fire-suppression capability standards to these devices and that HB 1391 does not contain qualifying language that would grandfather existing systems connected only to hydrant-shaped flush valves. Houston commented that when these bills are read together, HB 1391 and HB 1717 intend that a public utility system servicing a residential area in a city with a population of over 1,000,000 must meet the standard set for maintaining sufficient water pressure for service to fire hydrants adequate to protect public safety. Houston's concern lies with the commission's statement that the "proposed rule does not require a municipality to require that public utilities have fire hydrants in residential areas," which could mean that a public utility does not need to install fire hydrants. Further, Houston acknowledges that the commission's proposed rules allow for local adoption of more stringent requirements; however, as Houston intends to require fire hydrants in residential areas under its home rule powers, Houston requests that the commission clarify in its preamble that the commission's rule does not preclude a municipal ordinance requiring fire hydrants and additionally requests that the commission delete the statement in question from its preamble.

The commission acknowledges that utilities with fire hydrants must actually deliver the required capacity and pressure to their fire hydrants. However, the commission maintains that HB 1391 does not require a public utility to install fire hydrants if it currently does not have fire hydrants but that a municipality can require a utility to install fire hydrants under its own local authority. In response to this portion of the comment, the commission amended the descriptive language in the Section by Section Discussion to clarify the commission's position on the installation of fire hydrants and a municipality's authority. This portion of the comment also led the commission to conclude that §290.46(x)(2) of the rule should be amended by removing the phrase "have the ability to" to demonstrate the duty imposed upon public utilities to deliver service to their fire hydrants. The commission's rules are intended to implement HB 1391 which refers to fire hydrants; therefore, the commission's rule refers only to fire hydrants. The commission recognizes that regulatory authorities have ordinance authority beyond HB 1391. A regulatory authority may choose to pass an ordinance that covers devices having the appearance of a fire hydrant, such as a fire hydrant shaped flush valve. No changes were made in response to this portion of the comment.

Fiscal Note Provisions: Small Business and Micro Business Assessment

Houston commented that the commission understated the fiscal impact of its proposed rules. Houston believes the estimated cost of design and construction of a six-inch water line is $100 per linear foot, not $18.20 as stated in the preamble. Houston further states that in most cases, a six-inch water line may not be adequate to support multiple fire hydrants and that the commission's preamble similarly understated the estimated storage costs. Houston's estimates are derived from bids from construction projects that are already in progress, and their unit cost includes engineering design, construction (including labor, material, and all apparatuses), construction management, and testing and surveying.

The commission understands that the costs of design and construction can vary considerably from one part of the state to another and from one project to another. The commission's estimate consisted of the cost of installing the lines and the cost of a storage tank; no other costs were included. A water system's costs will vary according to the extent of the construction, the construction materials, the design of the existing facilities, and the difficulty of construction depending upon the construction location. The commission did seek current cost estimates from several stakeholders in the Houston area, including professional engineering firms. Those costs were used in developing the fiscal note. No changes were made in response to this comment.

§290.44. Water Distribution.

An individual commented that THSC, §341.042(b)(1) requires harvested rainwater systems for indoor use to be protected by cross-connection safeguards; however, since a rainwater harvesting system is a self-contained and stand-alone system, it does not need to be connected with a public water supply system. If the public water supply is needed as an auxiliary source of water, it should be allowed with the use of an air gap. The individual also commented that the requirement imposed by THSC, §341.042(b)(2) limiting the use of rainwater to non-potable purposes is unreasonable and unjustified. There is no need for separate plumbing lines in the house, one for potable and one for non-potable. Trinity Rainwater commented that the state needs to support water conservation and rainwater harvesting and further recommended that HB 4, §11 and SB 3, §2.28 be changed to allow potable use of rainwater with the installation of an air gap between the public water supply and a rainwater harvesting system. Innovative Water commented that the legislation affects its business by restricting their clients' option to use harvested rainwater for potable usage inside their homes. Innovative Water commented that municipalities already have existing regulations to ensure backflow prevention for structures that are connected to a public water system and a rainwater harvesting system. Innovative Water also commented that homeowners should have the right to use harvested rainwater for indoor potable purposes as long as they comply with applicable cross connection laws and regulations.

During the 80th Legislative Session, 2007, both SB 3, §2.28 and HB 4, §11 amended THSC, §341.042 to require that structures connected to a public water system that also have a rainwater harvesting system for indoor use can only use the rainwater harvesting system for "nonpotable indoor purposes." The commission's proposed rule language was taken directly from those legislative acts and is consistent with those amendments to the THSC, as authorized by the legislature. The commission does not have the authority to make changes to the THSC. No changes were made in response to this comment.

Innovative Water recommends that the commission establish statewide regulations for cross connection and backflow prevention.

The commission responds that it has a cross connection control program addressed in §290.44(h) and §290.47(i). The commission's program covers actual or potential contamination hazards. Furthermore, the requested changes are outside the scope of this rulemaking, as this rule implements only the changes made in response to HB 4, §11 and SB 3, §2.28, passed during the 80th

Legislative Session, 2007, which amended THSC, §341.042. No changes were made in response to this comment.

Bac-Flo commented that for pipes carrying rainwater, a standard for orange piping should be used and labeled with "RAIN WATER - NON-POTABLE" instead of the purple piping that is the standard for tertiary treated water, which is treated as sewer water. Innovative Water recommends the commission establish regulations for the marking of the pipes used for potable rainwater inside the home so that home buyers will be aware that the pipes come from the rainwater harvesting system and not the public water supply system.

The commission responds that it would need to seek additional stakeholder input and guidance outside the scope of this rulemaking regarding whether the commission has the authority to require certain plumbing practices. Furthermore, the requested changes are outside the scope of this rulemaking, as this rule implements only the changes made in response to HB 4, §11, and SB 3, §2.28, during the 80th Legislative Session, 2007, which amended THSC, §341.042. No changes were made in response to this comment.

POW commented that the Texas Water Development Board's report to the legislature on the topic of rainwater harvesting makes clear that harvested rainwater will be an essential component of meeting the future water needs for Texas. POW requested that the commission use its influence and authority with the legislature to modify the statute to eliminate the restriction of the use of harvested rainwater. An individual commented that the commission should work with the legislature and remove the sentence in THSC, §341.042(b) that restricts rainwater for indoor use to only non-potable uses.

During the 80th Legislative Session, 2007, both SB 3, §2.28 and HB 4, §11 amended THSC, §341.042 to require that a structure connected to a public water system that also has a rainwater harvesting system for indoor use can only use the rainwater harvesting system for "nonpotable indoor purposes." The commission's rule is consistent with this amendment to the THSC, as authorized by the legislature. No changes were made in response to this comment.

§290.46. Minimum Acceptable Operating Practices for Public Drinking Water Systems.

Houston commented that the eight utilities within its certificated area affected by the rule do not have fire hydrants because they do not have fire flow pressure to service fire hydrants. Houston's interpretation of the commission's proposed rule to implement HB 1391 is that these eight utilities would be exempt because these utilities are not required to have fire hydrants; therefore, the eight utilities would not have to meet the fire flow standards. Houston disagrees with this position. According to Houston, the rule could also be interpreted to mean that the utility would be required to have adequate pressure but not have a fire hydrant. Houston commented that HB 1391 requires that standards for maintaining sufficient water pressure for service to fire hydrants adequate to protect public safety must be adopted and that this means that fire hydrants must be provided by the utilities. Houston further states that HB 1391 gives the commission the authority to require the installation of fire hydrants and that the commission should do so by utilizing Houston's proposed language that would require a public utility to install and connect functioning fire hydrants to the public utility's water system.

The commission's adopted rule does not require a public utility to install fire hydrants if it currently does not have fire hydrants. However, a municipality can require the installation of fire hydrants under its own local authority. The commission maintains that if a utility does not have any fire hydrants, then §290.46(x) will not apply to the utility. For example, a city can adopt an ordinance requiring barbeque grills to be used at least 10 feet from any building. If a citizen has a barbeque grill within that city, the city's ordinance will apply, and the citizen will have to operate the grill at a proper distance. However, the citizen would not be required to purchase a barbeque grill if he does not already own one and then use it at the proper distance. It follows that if a utility has fire hydrants, then it must abide by this rule and any city standard adopted under it. However, if the utility does not have fire hydrants, it would not be required under these amendments to install fire hydrants and then comply with this rule. Also, the rule addresses the provision of service to fire hydrants, so the interpretation that a public utility would be required to maintain adequate pressure under this rule when it has no fire hydrants would be an incorrect interpretation. No changes were made in response to this comment.

Houston commented that by including the definition of "public utility" as stated in TWC, §13.002(23), it implies that entities which provide sewer service are also required to comply with the fire flow requirements of the rule. Houston requests that the commission revise the definition of a public utility to exclude sewer utilities.

HB 1391, which amended THSC, §341.0357(a)(1), states "{a} public utility has the meaning assigned by Section 13.002, Water Code." The language used in proposed §290.46(x)(1)(B) was taken directly from the statute. It is beyond the authority granted the commission to make changes to the THSC or the TWC. Furthermore, §290.46(x) addresses the provision of service to fire hydrants, which would not be connected to a sewer system. No changes were made in response to this comment.

Houston commented on the rule language proposed in §290.46(x)(2), suggesting modification to the requirement that a public water system must provide a minimum pressure of 20 psi by making it applicable only under emergency circumstances.

The commission agrees that the requirement applies during emergencies and amended §290.46(x)(2) to specify that the public utility must deliver service during emergencies such as fire fighting.

Houston commented that in the Section by Section Discussion's fourth paragraph, the commission stated that it intends to enforce its minimum standard for service on public utilities should the applicable local regulatory authority fail to adopt standards. Additionally, the commission will use the minimum standard to evaluate the adequacy of the local standards. Houston commented that it is unclear whether the commission will determine compliance by public utilities with the standards adopted by the local regulatory authority. Houston states that HB 1391 requires the commission to assess and ensure that the regulatory authority adopted the required standards and that all public utilities serving residential areas are complying with the standards. Houston contends that the commission must exercise its broad enforcement authority to ensure that public utilities are in compliance with standards required to be set by the local regulatory authority and provided additional new rule language that spells out this enforcement authority.

The commission maintains that it has sufficient authority to enforce the rule as written. THSC, §341.0357 explicitly requires the commission to enforce the requirements contained therein.

Section 290.46(x) states that a municipality with a population of 1,000,000 or more with a public utility within its corporate limits must adopt standards and that a public utility within the residential area of the municipality must comply with those standards. The commission will enforce this rule as it would any of its other rules, including ensuring that any public utility affected by this rule is complying with a municipality's standards as required. While the commission declines to amend the rule in response to this comment, the commission amended the descriptive language in the Section by Section Discussion to clarify that it will enforce a municipality's standard.

§290.47. Appendices.

Bac-Flo commented that §290.47(i), Appendix I, does not list rainwater harvesting in the Internal Protection listing. Currently, a rainwater harvesting system can only be connected to another source of water through an air gap separation.

The commission acknowledges the comment and will seek additional stakeholder input and guidance outside the scope of this rulemaking regarding whether the commission has the authority to require internal protection for rainwater harvesting systems. No changes were made in response to this comment.

Bac-Flo recommends that the TCEQ review all of the current auxiliary water source backflow prevention requirements. Bac-Flo also stated that in §290.47(i), Appendix I, under Premises Isolation, Connection to Sewer Pipe, the commission allows a connection to a sewer pipe with a reduced pressure backflow assembly or air gap. However, plumbing codes do not allow a connection to a sewer pipe, and the only recognized backflow prevention method in this specific instance is an air gap. Further, Bac-Flo commented that in §290.47(i), Appendix I, the heading for internal protection should be changed from "required" to "recommended" because the commission's regulations apply to containment requirements and not particularly to internal cross connection protection requirements.

The commission responds that the requested changes to Appendix I would be outside the scope of this rulemaking, as this rule implements only the changes made in response to HB 4, §11 and SB 3, §2.28, passed by the 80th Legislative Session, 2007, which amended THSC, §341.042. However, the change from "required" to "recommended" may be revisited in a future rulemaking. No changes were made in response to this comment.

STATUTORY AUTHORITY

These amendments are adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, §5.103, which establishes the commission's general authority to adopt rules, §5.105, which establishes the commission's authority to set policy by rule; Texas Health and Safety Code (THSC), §341.0315, which requires the commission to ensure that public drinking water supply systems supply safe drinking water, §341.042, which requires the commission to enforce the requirements contained therein, and §341.0357, which requires the commission to enforce the requirements contained therein.

The adopted amendments implement THSC, §§341.0315, 341.042, and 341.0357.

§290.46. Minimum Acceptable Operating Practices for Public Drinking Water Systems.

(a) General. When a public drinking water supply system is to be established, plans shall be submitted to the executive director for review and approval prior to the construction of the system. All public water systems are to be constructed in conformance with the requirements of this subchapter and maintained and operated in accordance with the following minimum acceptable operating practices. Owners and operators shall allow entry to members of the commission and employees and agents of the commission onto any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to public water systems in the state. Members, employees, or agents acting under this authority shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials.

(b) Microbiological. Submission of samples for microbiological analysis shall be as required by Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). Microbiological samples may be required by the executive director for monitoring purposes in addition to the routine samples required by the drinking water standards. These samples shall be submitted to a certified laboratory. (A list of the certified laboratories can be obtained by contacting the executive director).

(c) Chemical. Samples for chemical analysis shall be submitted as directed by the executive director.

(d) Disinfectant residuals and monitoring. A disinfectant residual must be continuously maintained during the treatment process and throughout the distribution system.

(1) Disinfection equipment shall be operated and monitored in a manner that will assure compliance with the requirements of §290.110 of this title (relating to Disinfectant Residuals).

(2) The disinfection equipment shall be operated to maintain the following minimum disinfectant residuals in each finished water storage tank and throughout the distribution system at all times:

(A) a free chlorine residual of 0.2 milligrams per liter (mg/L); or

(B) a chloramine residual of 0.5 mg/L (measured as total chlorine) for those systems that feed ammonia.

(e) Operation by trained and licensed personnel. Except as provided in paragraph (1) of this subsection, the production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director.

(1) Transient noncommunity public water systems are exempt from the requirements of this subsection if they use only groundwater or purchase treated water from another public water system.

(2) All public water systems that are subject to the provisions of this subsection shall meet the following requirements.

(A) Public water systems shall not allow new or repaired production, treatment, storage, pressure maintenance, or distribution facilities to be placed into service without the prior guidance and approval of a licensed water works operator.

(B) Public water systems shall ensure that their operators are trained regarding the use of all chemicals used in the water treatment plant. Training programs shall meet applicable standards established by the Occupational Safety and Health Administration (OSHA) or the Texas Hazard Communications Act, Texas Health and Safety Code, Title 6, Chapter 502.

(C) Public water systems using chlorine dioxide shall place the operation of the chlorine dioxide facilities under the direct

supervision of a licensed operator who has a Class "C" or higher license.

(3) Systems that only purchase treated water shall meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Purchased water systems serving no more than 250 connections must employ an operator who holds a Class "D" or higher license.

(B) Purchased water systems serving more than 250 connections, but no more than 1,000 connections, must employ an operator who holds a Class "C" or higher license.

(C) Purchased water systems serving more than 1,000 connections must employ at least two operators who hold a Class "C" or higher license and who each work at least 16 hours per month at the public water system's treatment or distribution facilities.

(4) Systems that treat groundwater and do not treat surface water or groundwater that is under the direct influence of surface water shall meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Groundwater systems serving no more than 250 connections must employ an operator with a Class "D" or higher license.

(B) Groundwater systems serving more than 250 connections, but no more than 1,000 connections, must employ an operator with a Class "C" or higher groundwater license.

(C) Groundwater systems serving more than 1,000 connections must employ at least two operators who hold a Class "C" or higher groundwater license and who each work at least 16 hours per month at the public water system's production, treatment, or distribution facilities.

(5) Systems that treat groundwater that is under the direct influence of surface water must meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Systems which serve no more than 1,000 connections and utilize cartridge or membrane filters must employ an operator who holds a Class "C" or higher groundwater license and has completed a four-hour training course on monitoring and reporting requirements or who holds a Class "C" or higher surface water license and has completed the Groundwater Production course.

(B) Systems which serve more than 1,000 connections and utilize cartridge or membrane filters must employ at least two operators who meet the requirements of subparagraph (A) of this paragraph and who each work at least 24 hours per month at the public water system's production, treatment, or distribution facilities.

(C) Systems which serve no more than 1,000 connections and utilize coagulant addition and direct filtration must employ an operator who holds a Class "C" or higher surface water license and has completed the Groundwater Production course or who holds a Class "C" or higher groundwater license and has completed a Surface Water Production course. Effective January 1, 2007, the public water system must employ at least one operator who has completed the Surface Water Unit I course and the Surface Water Unit II course.

(D) Systems which serve more than 1,000 connections and utilize coagulant addition and direct filtration must employ at least two operators who meet the requirements of subparagraph (C) of this paragraph and who each work at least 24 hours per month at the public water system's production, treatment, or distribution facilities. Effective January 1, 2007, the public water system must employ at least two operators who have completed the Surface Water Unit I course and the Surface Water Unit II course.

(E) Systems which utilize complete surface water treatment must comply with the requirements of paragraph (6) of this subsection.

(F) Each plant must have at least one Class "C" or higher operator on duty at the plant when it is in operation or the plant must be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the plant is not staffed.

(6) Systems that treat surface water must meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Surface water systems that serve no more than 1,000 connections must employ at least one operator who holds a Class "B" or higher surface water license. Part-time operators may be used to meet the requirements of this subparagraph if the operator is completely familiar with the design and operation of the plant and spends at least four consecutive hours at the plant at least once every 14 days and the system also employs an operator who holds a Class "C" or higher surface water license. Effective January 1, 2007, the public water system must employ at least one operator who has completed the Surface Water Unit I course and the Surface Water Unit II course.

(B) Surface water systems that serve more than 1,000 connections must employ at least two operators; one of the required operators must hold a Class "B" or higher surface water license and the other required operator must hold a Class "C" or higher surface water license. Each of the required operators must work at least 32 hours per month at the public water system's production, treatment, or distribution facilities. Effective January 1, 2007, the public water system must employ at least two operators who have completed the Surface Water Unit I course and the Surface Water Unit II course.

(C) Each surface water treatment plant must have at least one Class "C" or higher surface water operator on duty at the plant when it is in operation or the plant must be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the plant is not staffed.

(D) Public water systems shall not allow Class "D" operators to adjust or modify the treatment processes at surface water treatment plant unless an operator who holds a Class "C" or higher surface license is present at the plant and has issued specific instructions regarding the proposed adjustment.

(f) Operating records and reports. Water systems must maintain a record of water works operation and maintenance activities and submit periodic operating reports.

(1) The public water system's operating records must be organized, and copies must be kept on file or stored electronically.

(2) The public water system's operating records must be accessible for review during inspections.

(3) All public water systems shall maintain a record of operations.

(A) The following records shall be retained for at least two years:

(i) the amount of chemicals used:

(I) Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of each chemical used each day.

(II) Systems that serve 250 or more connections or serve 750 or more people shall maintain a record of the amount of each chemical used each day.

(III) Systems that serve fewer than 250 connections, serve fewer than 750 people, and use only groundwater or purchased treated water shall maintain a record of the amount of each chemical used each week;

(ii) the volume of water treated:

(I) Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of water treated each day.

(II) Systems that serve 250 or more connections or serve 750 or more people shall maintain a record of the amount of water treated each day.

(III) Systems that serve fewer than 250 connections, serve fewer than 750 people, and use only groundwater or purchase treated water shall maintain a record of the amount of water treated each week;

(iii) the date, location, and nature of water quality, pressure, or outage complaints received by the system and the results of any subsequent complaint investigation;

(iv) the dates that dead-end mains were flushed;

(v) the dates that storage tanks and other facilities were cleaned;

(vi) the maintenance records for water system equipment and facilities; and

(vii) for systems that do not employ full-time operators to meet the requirements of subsection (e) of this section, a daily record or a monthly summary of the work performed and the number of hours worked by each of the part-time operators used to meet the requirements of subsection (e) of this section.

(B) The following records shall be retained for at least three years:

(i) copies of notices of violation and any resulting corrective actions. The records of the actions taken to correct violations of primary drinking water regulations must be retained for at least three years after the last action taken with respect to the particular violation involved;

(ii) copies of any public notice issued by the water system;

(iii) the disinfectant residual monitoring results from the distribution system;

(iv) the turbidity monitoring results and exception reports for individual filters as required by §290.111 of this title (relating to Surface Water Treatment);

(v) the calibration records for laboratory equipment, flow meters, rate-of-flow controllers, on-line turbidimeters, and on-line disinfectant residual analyzers;

(vi) the records of backflow prevention device programs;

(vii) the raw surface water monitoring results must be retained for three years after bin classification required by §290.111 of this title;

(viii) notification to the executive director that a system will provide 5.5-log *Cryptosporidium* treatment in lieu of raw surface water monitoring; and

(ix) except for those specified in clause (iv) of this subparagraph and subparagraph (E)(i) of this paragraph, the results of all surface water treatment monitoring that are used to demonstrate log inactivation or removal.

(C) The following records shall be retained for a period of five years after they are no longer in effect:

(i) the records concerning a variance or exemption granted to the system;

(ii) Concentration Time (CT) studies for surface water treatment plants; and

(iii) the Recycling Practices Report form and other records pertaining to site-specific recycle practices for treatment plants that recycle.

(D) The following records shall be retained for at least five years:

(i) the results of microbiological analyses;

(ii) the results of inspections (as required in subsection (m)(1) of this section) for all water storage and pressure maintenance facilities;

(iii) the results of inspections as required by subsection (m)(2) of this section for all pressure filters;

(iv) documentation of compliance with state approved corrective action plan and schedules required to be completed by groundwater systems that must take corrective actions;

(v) documentation of the reason for an invalidated fecal indicator source sample;

(vi) notification to wholesale system(s) of a distribution coliform positive sample for consecutive systems using groundwater; and

(vii) Consumer Confidence Report compliance documentation.

(E) The following records shall be retained for at least ten years:

(i) copies of Monthly Operating Reports and any supporting documentation including turbidity monitoring results of the combined filter effluent;

(ii) the results of chemical analyses;

(iii) any written reports, summaries, or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by the executive director shall be kept for a period not less than ten years after completion of the survey involved;

(iv) copies of the Customer Service Inspection reports required by subsection (j) of this section;

(v) copy of any Initial Distribution System Evaluation (IDSE) plan, report, approval letters, and other compliance documentation required by §290.115 of this title (relating to Stage 2 Disinfection By-products (TTHM and HAA5));

(vi) state notification of any modifications to an IDSE report;

(vii) copy of any 40/30 certification required by §290.115 of this title;

(viii) documentation of corrective actions taken by groundwater systems in accordance with §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques); and

(ix) any monitoring plans required by §290.121(b) of this title (relating to Monitoring Plans).

(F) A public water system shall maintain records relating to special studies and pilot projects, special monitoring, and other system-specific matters as directed by the executive director.

(4) Water systems shall submit routine reports and any additional documentation that the executive director may require to determine compliance with the requirements of this chapter.

(A) The reports must be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period.

(B) The reports must contain all the information required by the drinking water standards and the results of any special monitoring tests which have been required.

(C) The reports must be completed in ink, typed, or computer-printed and must be signed by the certified water works operator.

(g) Disinfection of new or repaired facilities. Disinfection by or under the direction of water system personnel must be performed when repairs are made to existing facilities and before new facilities are placed into service. Disinfection must be performed in accordance with American Water Works Association (AWWA) requirements and water samples must be submitted to a laboratory approved by the executive director. The sample results must indicate that the facility is free of microbiological contamination before it is placed into service. When it is necessary to return repaired mains to service as rapidly as possible, doses may be increased to 500 mg/L and the contact time reduced to 1/2 hour.

(h) Calcium hypochlorite. A supply of calcium hypochlorite disinfectant shall be kept on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service.

(i) Plumbing ordinance. Public water systems must adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to insure that neither cross-connections nor other unacceptable plumbing practices are permitted. See §290.47(b) of this title (relating to Appendices). Should sanitary control of the distribution system not reside with the purveyor, the entity retaining sanitary control shall be responsible for establishing and enforcing adequate regulations in this regard. The use of pipes and pipe fittings that contain more than 8.0% lead or solders and flux that contain more than 0.2% lead is prohibited for installation or repair of any public water supply and for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system. This requirement may be waived for lead joints that are necessary for repairs to cast iron pipe.

(j) Customer service inspections. A customer service inspection certificate shall be completed prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities. Any customer service inspection certificate form which varies from the format found in §290.47(d) of this title must be approved by the executive director prior to being placed in use.

(1) Individuals with the following credentials shall be recognized as capable of conducting a customer service inspection certification.

(A) Plumbing Inspectors and Water Supply Protection Specialists licensed by the Texas State Board of Plumbing Examiners (TSBPE).

(B) Customer service inspectors who have completed a commission-approved course, passed an examination administered by the executive director, and hold current professional license as a customer service inspector.

(2) As potential contaminant hazards are discovered, they shall be promptly eliminated to prevent possible contamination of the water supplied by the public water system. The existence of a health hazard, as identified in §290.47(i) of this title, shall be considered sufficient grounds for immediate termination of water service. Service can be restored only when the health hazard no longer exists, or until the health hazard has been isolated from the public water system in accordance with §290.44(h) of this title (relating to Water Distribution).

(3) These customer service inspection requirements are not considered acceptable substitutes for and shall not apply to the sanitary control requirements stated in §290.102(a)(5) of this title (relating to General Applicability).

(4) A customer service inspection is an examination of the private water distribution facilities for the purpose of providing or denying water service. This inspection is limited to the identification and prevention of cross-connections, potential contaminant hazards, and illegal lead materials. The customer service inspector has no authority or obligation beyond the scope of the commission's regulations. A customer service inspection is not a plumbing inspection as defined and regulated by the TSBPE. A customer service inspector is not permitted to perform plumbing inspections. State statutes and TSBPE adopted rules require that TSBPE licensed plumbing inspectors perform plumbing inspections of all new plumbing and alterations or additions to existing plumbing within the municipal limits of all cities, towns, and villages which have passed an ordinance adopting one of the plumbing codes recognized by TSBPE. Such entities may stipulate that the customer service inspection be performed by the plumbing inspector as a part of the more comprehensive plumbing inspection. Where such entities permit customer service inspectors to perform customer service inspections, the customer service inspector shall report any violations immediately to the local entity's plumbing inspection department.

(k) Interconnection. No physical connection between the distribution system of a public drinking water supply and that of any other water supply shall be permitted unless the other water supply is of a safe, sanitary quality and the interconnection is approved by the executive director.

(l) Flushing of mains. All dead-end mains must be flushed at monthly intervals. Dead-end lines and other mains shall be flushed as needed if water quality complaints are received from water customers or if disinfectant residuals fall below acceptable levels as specified in §290.110 of this title.

(m) Maintenance and housekeeping. The maintenance and housekeeping practices used by a public water system shall ensure the good working condition and general appearance of the system's facili-

ties and equipment. The grounds and facilities shall be maintained in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water.

(1) Each of the system's ground, elevated, and pressure tanks shall be inspected annually by water system personnel or a contracted inspection service.

(A) Ground and elevated storage tank inspections must determine that the vents are in place and properly screened, the roof hatches closed and locked, flap valves and gasketing provide adequate protection against insects, rodents, and other vermin, the interior and exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in a watertight condition.

(B) Pressure tank inspections must determine that the pressure release device and pressure gauge are working properly, the air-water ratio is being maintained at the proper level, the exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in watertight condition. Pressure tanks provided with an inspection port must have the interior surface inspected every five years.

(C) All tanks shall be inspected annually to determine that instrumentation and controls are working properly.

(2) When pressure filters are used, a visual inspection of the filter media and internal filter surfaces shall be conducted annually to ensure that the filter media is in good condition and the coating materials continue to provide adequate protection to internal surfaces.

(3) When cartridge filters are used, filter cartridges shall be changed at the frequency required by the manufacturer, or more frequently if needed.

(4) All water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances shall be maintained in a watertight condition and be free of excessive solids.

(5) Basins used for water clarification shall be maintained free of excessive solids to prevent possible carryover of sludge and the formation of tastes and odors.

(6) Pumps, motors, valves, and other mechanical devices shall be maintained in good working condition.

(n) Engineering plans and maps. Plans, specifications, maps, and other pertinent information shall be maintained to facilitate the operation and maintenance of the system's facilities and equipment. The following records shall be maintained on file at the public water system and be available to the executive director upon request.

(1) Accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank shall be maintained at the public water system until the facility is decommissioned. As-built plans of individual projects may be used to fulfill this requirement if the plans are maintained in an organized manner.

(2) An accurate and up-to-date map of the distribution system shall be available so that valves and mains can be easily located during emergencies.

(3) Copies of well completion data such as well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well shall be kept on file for as long as the well remains in service.

(o) Filter backwashing at surface water treatment plants. Filters must be backwashed when a loss of head differential of six to ten feet is experienced between the influent and effluent loss of head gauges or when the turbidity level at the effluent of the filter reaches 1.0 nephelometric turbidity unit (NTU).

(p) Data on water system ownership and management. The agency shall be provided with information regarding water system ownership and management.

(1) When a water system changes ownership, a written notice of the transaction must be provided to the executive director. When applicable, notification shall be in accordance with Chapter 291 of this title (relating to Utility Regulations). Those systems not subject to Chapter 291 of this title shall notify the executive director of changes in ownership by providing the name of the current and prospective owner or responsible official, the proposed date of the transaction, and the address and phone number of the new owner or responsible official. The information listed in this paragraph and the system's public drinking water supply identification number, and any other information necessary to identify the transaction shall be provided to the executive director 120 days before the date of the transaction.

(2) On an annual basis, the owner of a public water system shall provide the executive director with a written list of all the operators and operating companies that the public water system employs. The notice shall contain the name, license number, and license class of each employed operator and the name and registration number of each employed operating company. See §290.47(g) of this title.

(q) Special precautions. Special precautions must be instituted by the water system owner or responsible official in the event of low distribution pressures (below 20 pounds per square inch (psi)), water outages, microbiological samples found to contain E. coli or fecal coliform organisms, failure to maintain adequate chlorine residuals, elevated finished water turbidity levels, or other conditions which indicate that the potability of the drinking water supply has been compromised.

(1) Boil water notifications must be issued to the customers within 24 hours using the prescribed notification format as specified in §290.47(e) of this title. A copy of this notice shall be provided to the executive director. Bilingual notification may be appropriate based upon local demographics. Once the boil water notification is no longer in effect, the customers must be notified in a manner similar to the original notice.

(2) The flowchart found in §290.47(h) of this title shall be used to determine if a boil water notification must be issued in the event of a loss of distribution system pressure. If a boil water notice is issued under this section, it shall remain in effect until water distribution pressures in excess of 20 psi can consistently be maintained, a minimum of 0.2 mg/L free chlorine residual or 0.5 mg/L chloramine residual (measured as total chlorine) is present throughout the system, and water samples collected for microbiological analysis are found negative for coliform organisms.

(3) A boil water notification shall be issued if the turbidity of the finished water produced by a surface water treatment plant exceeds 5.0 NTU. The boil water notice shall remain in effect until the water entering the distribution system has a turbidity level below 1.0 NTU, the distribution system has been thoroughly flushed, a minimum of 0.2 mg/L free chlorine residual or 0.5 mg/L chloramine residual (measured as total chlorine) is present throughout the system, and water samples collected for microbiological analysis are found negative for coliform organisms.

(4) Other protective measures may be required at the discretion of the executive director.

(r) Minimum pressures. All public water systems shall be operated to provide a minimum pressure of 35 psi throughout the distribution system under normal operating conditions. The system shall also be operated to maintain a minimum pressure of 20 psi during emergencies such as fire fighting.

(s) Testing equipment. Accurate testing equipment or some other means of monitoring the effectiveness of any chemical treatment or pathogen inactivation or removal processes must be used by the system.

(1) Flow measuring devices and rate-of-flow controllers that are required by §290.42(d) of this title (relating to Water Treatment) shall be calibrated at least once every 12 months. Well meters required by §290.41(c)(3)(N) of this title (relating to Water Sources) shall be calibrated at least once every three years.

(2) Laboratory equipment used for compliance testing shall be properly calibrated.

(A) pH meters shall be properly calibrated.

(i) Benchtop pH meters shall be calibrated according to manufacturers specifications at least once each day.

(ii) The calibration of benchtop pH meters shall be checked with at least one buffer each time a series of samples is run, and if necessary, recalibrated according to manufacturers specifications.

(iii) On-line pH meters shall be calibrated according to manufacturer specifications at least once every 30 days.

(iv) The calibration of on-line pH meters shall be checked at least once each week with a primary standard or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit. If necessary, the on-line unit shall be recalibrated with primary standards.

(B) Turbidimeters shall be properly calibrated.

(i) Benchtop turbidimeters shall be calibrated with primary standards at least once every 90 days. Each time the turbidimeter is calibrated with primary standards, the secondary standards shall be restandardized.

(ii) The calibration of benchtop turbidimeters shall be checked with secondary standards each time a series of samples is tested, and if necessary, recalibrated with primary standards.

(iii) On-line turbidimeters shall be calibrated with primary standards at least once every 90 days.

(iv) The calibration of on-line turbidimeters shall be checked at least once each week with a primary standard, a secondary standard, or the manufacturer's proprietary calibration confirmation device or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit. If necessary, the on-line unit shall be recalibrated with primary standards.

(C) Chemical disinfectant residual analyzers shall be properly calibrated.

(i) The accuracy of manual disinfectant residual analyzers shall be verified at least once every 30 days using chlorine solutions of known concentrations.

(ii) Continuous disinfectant residual analyzers shall be calibrated at least once every 90 days using chlorine solutions of known concentrations.

(iii) The calibration of continuous disinfectant residual analyzers shall be checked at least once each month with a chlorine solution of known concentration or by comparing the results from the on-line analyzer with the result of approved benchtop amperometric, spectrophotometric, or titration method.

(D) Ultraviolet (UV) light disinfection analyzers shall be properly calibrated.

(i) The accuracy of duty UV sensors shall be verified with a reference UV sensor monthly, according to the UV sensor manufacturer.

(ii) The reference UV sensor shall be calibrated by the UV sensor manufacturer on a yearly basis, or sooner if needed.

(iii) If used, the Ultraviolet Transmittance (UVT) analyzer shall be calibrated weekly according to the UVT analyzer manufacturer specifications.

(E) Systems must verify the performance of direct integrity testing equipment in a manner and schedule approved by the executive director.

(t) System ownership. All community water systems shall post a legible sign at each of its production, treatment, and storage facilities. The sign shall be located in plain view of the public and shall provide the name of the water supply and an emergency telephone number where a responsible official can be contacted.

(u) Abandoned wells. Abandoned public water supply wells owned by the system must be plugged with cement according to 16 Texas Administrative Code (TAC) Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers). Wells that are not in use and are non-deteriorated as defined in those rules must be tested every five years or as required by the executive director to prove that they are in a non-deteriorated condition. The test results shall be sent to the executive director for review and approval. Deteriorated wells must be either plugged with cement or repaired to a non-deteriorated condition.

(v) Electrical wiring. All water system electrical wiring must be securely installed in compliance with a local or national electrical code.

(w) Security. All systems shall maintain internal procedures to notify the executive director by a toll-free reporting phone number immediately of the following events, if the event may negatively impact the production or delivery of safe and adequate drinking water:

(1) an unusual or unexplained unauthorized entry at property of the public water system;

(2) an act of terrorism against the public water system;

(3) an unauthorized attempt to probe for or gain access to proprietary information that supports the key activities of the public water system;

(4) a theft of property that supports the key activities of the public water system; or

(5) a natural disaster, accident, or act that results in damage to the public water system.

(x) Public safety standards. This subsection only applies to a municipality with a population of 1,000,000 or more, with a public utility within its corporate limits.

(1) In this subsection:

(A) "Regulatory authority" means, in accordance with the context in which it is found, either the commission or the governing body of a municipality.

(B) "Public utility" means any person, corporation, cooperative corporation, affected county, or any combination of these

persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(C) "Residential area" means:

(i) an area designated as a residential zoning district by a governing ordinance or code or an area in which the principal land use is for private residences;

(ii) a subdivision for which a plat is recorded in the real property records of the county and that contains or is bounded by public streets or parts of public streets that are abutted by residential property occupying at least 75 percent of the front footage along the block face; or

(iii) a subdivision a majority of the lots of which are subject to deed restrictions limiting the lots to residential use.

(2) A public utility shall deliver water to any fire hydrant connected to the public utility's water system located in a residential area so that the flow at the fire hydrant is at least 250 gallons per minute for a minimum period of two hours while maintaining a minimum pressure of 20 psi throughout the distribution system during emergencies such as fire fighting. That flow is in addition to the public utility's maximum daily demand for purposes other than firefighting.

(3) When the regulatory authority is a municipality, it shall by ordinance adopt standards for maintaining sufficient water pressure for service to fire hydrants adequate to protect public safety in residential areas in the municipality. The standards specified in paragraph (2) of this subsection are the minimum acceptable standards.

(4) When the regulatory authority is a municipality, it shall adopt the standards required by this subsection within one year of the date this subsection first applies to the municipality.

(5) A public utility shall comply with the standards established by a municipality, within one year of the date the standards first apply to the public utility. If a municipality has failed to comply with the deadline required by paragraph (4) of this subsection, then a public utility shall comply with the standards specified in paragraph (2) of this subsection within two years of the effective date of this subsection or within one year of the date this subsection first applies to the public utility, whichever occurs later.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 26, 2008.

TRD-200805209

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 16, 2008
Proposal publication date: May 2, 2008
For further information, please call: (512) 239-0177

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 25. BEACH CLEANING AND MAINTENANCE ASSISTANCE PROGRAM

31 TAC §25.13

The General Land Office (GLO) adopts without changes amendments to 31 TAC §25.13 relating to extent of state assistance available to cities and counties as reimbursement for cleaning and maintenance of public beach as published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5892).

BACKGROUND

The amended §25.13 allows cities and counties to receive reimbursement for eligible expenses incurred in performing beach cleaning and maintenance on public beaches that are owned or managed by the Texas Parks and Wildlife Department (TPWD) that are within the boundaries of the city or county. Prior to the adoption of this amendment, §25.13 limited reimbursement for beach cleaning and maintenance to a local government for the cleaning and maintenance of public beaches that were not in the jurisdiction of another governmental entity. However, the responsibility to clean and maintain beaches within state parks is not exclusive to the state. Texas Natural Resources Code §61.067 authorizes the GLO to adopt rules and procedures for cleaning beaches in state parks in consultation with TPWD. Section 61.067 does not prohibit reimbursement of a local government for cleaning beaches on property owned or managed by TPWD. The adopted amendments to §25.13 allow reimbursement to the local government where the beach maintenance by the local government is authorized by TPWD.

SUMMARY AND PUBLIC COMMENTS

The amendment to §25.13(a) provides that cities and counties that qualify for eligibility under Texas Natural Resources Code §§61.068 - 61.070 may receive up to two-thirds reimbursement for eligible expenses to clean and maintain public beaches owned or managed by TPWD where the city or county has provided a copy of the department's written authorization to perform such cleaning and maintenance. The amendment to §25.13(b) provides that cities that qualify for eligibility under Texas Natural Resources Code §61.080 and counties that qualify for reimbursement under Texas Natural Resources Code §61.081, but do not qualify for eligibility under Natural Resources Code §§61.068 - 61.070, may receive up to 40% reimbursement for eligible expenses to clean and maintain public beaches owned or managed by TPWD where the city or county has provided a copy of the department's written authorization to perform such cleaning and maintenance. The amendment to §25.13(c) corrects a reference to the Natural Resources Code.

No comments were received regarding the adoption of the amendments.

REASONED JUSTIFICATION

Every year for the first five-year period the proposed amendments are in effect, the public will benefit from the proposed changes because cleaning and maintenance activities initiated by local governments in public beaches owned or managed by the TPWD will reduce conditions that pose a risk to the safety and personal health of beach visitors. Furthermore, the collection and removal of litter and debris can result in increased tourism thereby providing local businesses and government with the potential to boost tourism revenues.

STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code §61.067, which authorizes the GLO to adopt rules for cleaning beaches in state parks and rules reasonably necessary to perform its duties under Texas Natural Resources Code Chapter 61, Subchapter C, pertaining to maintenance of public beaches.

Texas Natural Resources Code §§61.068 - 61.070 are affected by the proposed amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 24, 2008.

TRD-200805157
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
Effective date: October 14, 2008
Proposal publication date: July 25, 2008
For further information, please call: (512) 475-1859

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 25. SAFETY RESPONSIBILITY REGULATIONS

37 TAC §§25.1 - 25.8, 25.20, 25.21

The Texas Department of Public Safety adopts amendments to §§25.1 - 25.8, 25.20 and 25.21, concerning Safety Responsibility Regulations, without changes to the proposed text as published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6069).

Adoption of amendments to §§25.1 - 25.4, 25.6, 25.7, and 25.21 change "accident" to "crash" and are necessary in order to bring the rules into compliance with the national standards.

Adoption of amendments to §25.2(c)(3)(D) and (c)(4)(D) pertain to the Department's recognition of the subrogation rights of insurance companies and are necessary in order to allow insurance companies or their authorized representatives to sign on behalf of their insured. An additional amendment to the section is also necessary in order to remove language from the rule to make it consistent with recent bankruptcy court rulings.

Adoption of amendments to §25.1(b) are necessary in order to change the word "will" to "may" in regards to the Department's duty to request supporting estimates and/or medical expenses. Adoption of this amendment is necessary in order for the Department to eliminate the processing of cases that do not meet the criteria required for a suspension action and allow them to request estimates and/or medical expenses as needed.

Adoption of amendments to §25.6 are necessary in order to add new subsection (g) which enables the Department to invalidate an SR-22 insurance certificate if a driver is convicted of a No Liability Insurance citation after filing an SR-22 insurance certificate with the Department. The addition of new subsection (h) is necessary in order to assist the Department in implementing the use of the new Financial Responsibility Verification Program by enabling the Department to invalidate an SR-22 when it receives information through the new program indicating that the insurance coverage can no longer be confirmed or found on record.

Adoption of amendments to §25.7(b)(2) are necessary in order to change the time period in which an audit would be completed from 6 months to 1 year. This change makes the rule consistent with standard business practices. Amendment to (c)(1) is necessary in order to increase the amount used by the Department to determine the ability of self-insurance applicants to satisfy claims. Amendment to (d)(3) is necessary in order to increase the amount self-insured entities agree to pay if a judgment is rendered against them and will make the rule consistent with the recent increase in minimum coverage amounts under Texas Transportation Code, §601.072.

Adoption of additional amendments to §§25.2 - 25.5 are necessary in order to add the phrase "prior to renewal or issuance of a license" to all references to the requirement of a "reinstatement fee." These changes are necessary in order to clarify that the Department is not extending the suspension period until the reinstatement fee is paid.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Chapter 601 of the Texas Transportation Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 25, 2008.

TRD-200805208
Stanley E. Clark
Director
Texas Department of Public Safety
Effective date: October 15, 2008
Proposal publication date: August 1, 2008
For further information, please call: (512) 424-2135

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 4. EMPLOYMENT PRACTICES
SUBCHAPTER E. SICK LEAVE POOL PROGRAM

43 TAC §§4.50, 4.51, 4.55, 4.56

The Texas Department of Transportation (department) adopts amendments to §4.50, purpose, §4.51, definitions, §4.55, contribution returns, and §4.56, withdrawals, concerning the sick leave pool program. The amendments to §4.51 and §4.55 are adopted with changes to the proposed text as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5509). The amendments to §4.50 and §4.56 are adopted without changes to the proposed text and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The amendments revise definitions, change eligibility requirements, and clarify existing language. These changes will allow the department to control abuse of the sick leave pool, make the program more consistent with other state agencies' sick leave pool programs, and more specifically tailor the program to ensure the leave is available only to those dealing with a catastrophic illness or injury.

Amendments to §§4.50, 4.51, 4.55, and 4.56 require employees to exhaust all types of paid leave, instead of just sick leave, before being eligible to use leave from the sick leave pool. This change will make the department's sick leave pool program consistent with those of other state agencies. It will also decrease the perception that the sick leave pool program is susceptible to abuse, which is expected to increase employees' willingness to donate their excess sick leave to the pool.

Amendments to §4.51, Definitions, clarify that Human Resources Officer means an employee with a human resources business job title; add a definition of paid leave to include accrued sick leave, vacation leave, and regular or Fair Labor Standards Act compensatory time earned by an employee; clarify that "severe physical condition" refers to the condition of the patient, regardless of whether the patient is the employee or the employee's family member and requires the patient to be incapacitated instead of off work for 12 continuous weeks or more for the current episode. Subsequent paragraphs are renumbered.

Amendments to §4.56, Withdrawals, change the restriction on requests for withdrawal of sick leave criteria from abuse of sick leave to abuse of any type of leave in the 12 months preceding the date that leave from the pool will be needed. Employees can use any type of their own accrued leave when they are out of work due to illness. Broadening the definition of leave abuse that would make an employee ineligible for sick leave pool provides better control of the program and decreases the perception that the sick leave pool program is susceptible to abuse. Limiting the time during which an employee is not eligible for sick leave pool to the 12 months preceding the need for the leave will allow employees to change the behavior that led to the discipline and allow them to again become eligible for sick leave pool. These amendments allow the department to better protect its assets by focusing the stricter controls on those employees who are most likely to attempt to abuse the program without making it unnecessarily difficult for other employees to obtain leave under the program.

COMMENTS

Comments on the proposed amendments were received from 91 individuals and are addressed as follows. Some comments received were of a general nature and did not particularly concern the amendments. Most of the comments concerned the requirement that employees exhaust all accrued leave instead of just sick leave before being allowed to use hours granted from the sick leave pool. Thirty-eight commenters supported the change to eliminate abuse and encourage employees to be better stewards of their leave. Twenty-four commenters did not agree with this change.

Comment: Twenty-two commenters suggested that employees be allowed to keep all or some of their vacation or compensatory time while using sick leave pool.

Response: Sick leave pool is intended for employees who have exhausted all their leave due to a catastrophic illness. This change will make the department's sick leave pool program consistent with those of other state agencies. It will also decrease the perception that the sick leave pool program is susceptible to abuse, which is expected to increase employees' willingness to donate their excess sick leave to the pool.

Comment: Two commenters suggested not requiring employees with on-the-job injuries to exhaust all their accrued leave before being allowed to use hours from the sick leave pool.

Response: Workers' compensation is a separate program that provides a different set of benefits for injured workers. The sick leave pool program is a benefit that is available equally to all employees.

Comment: Three commenters suggested requiring employees to have a minimum number of hours of accrued leave to be eligible for hours from the sick leave pool.

Response: The department does not require employees to maintain a minimum sick leave or vacation balance to be eligible for any department benefit. In addition, requiring that employees have a leave balance to qualify for hours from the sick leave pool would not be consistent with Government Code, Chapter 661, which specifies that all employees are eligible to apply for leave from the sick leave pool.

Comment: Three commenters said that hours from the sick leave pool should be available to employees who do not have a catastrophic illness or injury. One commenter suggested that hours from the sick leave pool be only for employees' medical conditions and not to care for family members.

Response: The revisions suggested would not be consistent with Government Code, Chapter 661, which specifies that an employee may withdraw time from the sick leave pool in the case of catastrophic illness or injury of the employee or the employee's immediate family.

Comment: Four commenters indicated a preference to donate sick leave hours to a specific employee rather than to the sick leave pool.

Response: State law allows for a sick leave pool but does not allow sick leave to be transferred from one employee to another.

Comment: Two commenters suggested limiting sick leave pool hours to the number of hours an employee had accrued at the onset of the condition.

Response: The current rule establishes the maximum withdrawal as provided by statute. Any limits on that maximum would be more appropriately addressed in policy.

Comment: One commenter suggested not requiring employees who use sick leave pool hours intermittently to exhaust all their accrued leave. One commenter expressed concern that new hires would not be allowed to use their accrued vacation leave before using sick leave pool and would have a small amount of accrued vacation available to them upon their return. One commenter suggested that sick leave pool not be available to employees who have retired and been rehired.

Response: The suggested revisions would not be consistent with Government Code, Chapter 661, which specifies that all employees are eligible to apply for hours from the sick leave pool.

Comment: Thirteen commenters supported clarifying the definition of severe physical condition. Nine commenters requested a definition of incapacitated.

Response: The department agrees that clarification is needed, and a definition of incapacitated has been added to §4.51.

Comment: Four commenters objected to changing the current definition of severe physical condition. Three commenters suggested that a shorter duration of incapacity be considered.

Response: The change to the definition is intended to ensure that the qualifying condition is truly a catastrophic condition as required by Government Code, Chapter 661.

Comment: Seven commenters supported the clarification of human resources title. Two commenters suggested the human resources officer designate who would handle the requests.

Response: Each of the functions to which this definition applies is a proper job function of a human resources officer.

Comment: Nineteen commenters supported the restriction that employees who have been formally disciplined for abuse of leave, instead of abuse of sick leave, in the 12 months preceding the need for the leave will not be eligible for sick leave pool. Four commenters objected to this change. One commenter suggested making only abusers exhaust their vacation leave before being eligible for hours from the sick leave pool. One commenter suggested changing the 12 months to 36 months, and one suggested no time limit.

Response: The time limits as drafted will best balance the need to protect the program from abuse against the need to make the program accessible to all employees.

Comment: Two commenters objected that it would be unduly burdensome for an employee to obtain a second medical opinion.

Response: This requirement applies only to employees who have a recent history of abusing leave time. This control is reasonable and necessary to protect the program from potential abuse.

Comment: One commenter suggested looking at employee evaluations.

Response: The revision suggested would not be consistent with Government Code, Chapter 661, which specifies that all employees are eligible to apply for hours from the sick leave pool.

Comment: One commenter objected to the requirement that an employee use all vacation leave before hours can be returned from the employee's previous contribution to the pool.

Response: The department agrees with this comment and §4.55(a)(3) and (b)(2) have been changed accordingly.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Government Code, §661.002 which provides that the governing body of a state agency shall adopt rules and prescribe procedures relating to the operation of the agency sick leave pool.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 661, Subchapter A.

§4.51. Definitions.

The following words and terms, when used in the sections under this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Catastrophic illness or injury--A severe condition or combination of conditions affecting the mental or physical health of an employee or an employee's immediate family member that requires the services of a health care provider for a prolonged period of time and that forces the employee to exhaust all paid leave earned by that employee.

(2) Contribute--To give sick leave from an employee's personal sick leave account to the department sick leave pool.

(3) Different but related condition--A secondary catastrophic condition that occurs at a later date and is caused by a primary catastrophic condition such as cancer, which spreads from one part of the body to another.

(4) Discipline--Written reprimand, probation, suspension without pay, involuntary demotion, involuntary transfer (lateral), or disciplinary reduction in pay.

(5) Employee--A person, other than the executive director, who is employed by the department.

(6) Health care provider--A medical doctor (MD) or a doctor of osteopathy (DO) who is licensed and authorized to practice in this country or in a country other than the United States in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under applicable law.

(7) Human resources officer--An employee with a human resources business job title and who is responsible for verifying the accuracy of all employee paid leave records. If more than one employee has these responsibilities, their activities will be coordinated for the purpose of this subchapter.

(8) Immediate family--Individuals related by kinship, adoption, or marriage who are living in the same household, foster children living in the same household and certified by the Texas Department of Family and Protective Services, or a spouse, child, or parent of the employee who does not live in the same household and who needs care and assistance as a direct result of a documented medical condition.

(9) Incapacitated--Unable to perform the individual's normal daily activities, including working and activities that are fundamental for self care such as dressing, eating, ambulating, toileting, and hygiene, due to the catastrophic medical condition.

(10) Licensed psychiatrist--A psychiatrist licensed by a state medical licensing board.

(11) Paid Leave--Accrued sick leave, vacation leave, and regular or Fair Labor Standards Act compensatory time earned by an employee.

(12) Pool administrator--The Director of the Human Resources Division or designee who administers the department's sick leave pool program.

(13) Request--An initial application for withdrawal from the sick leave pool or an application for an extension of a withdrawal due to a catastrophic illness or injury.

(14) Severe physical condition--A physical illness or injury that will likely result in death or causes the patient to be incapacitated for 12 continuous weeks or more for the current episode.

(15) Severe psychological condition--A psychological illness that results in:

(A) a patient being suicidal or capable of harming themselves or others and requires five days or more inpatient hospitalization; or

(B) electroshock treatment.

(16) Sick leave--Leave taken when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care and assist a member of his or her immediate family who is actually ill.

(17) Sick leave pool--A department-wide pool that receives voluntary contributions of sick leave from employees and which transfers approved amounts of sick leave to eligible employees.

(18) Withdrawal--An approved transfer of sick leave hours from the department sick leave pool.

§4.55. Contribution Returns.

(a) Restrictions.

(1) An employee or employee's immediate family member must suffer an illness or injury, not necessarily catastrophic, to have the employee's contribution returned.

(2) Regardless of the number of requests, the number of hours that may be returned to an employee shall not exceed the total number of hours he or she has contributed since the beginning of the program, June 1, 1990.

(3) All accrued sick leave must be exhausted by the employee before hours will be returned from a previous contribution.

(4) The maximum number of hours that may be returned per request shall not exceed the amount needed. The amount needed is determined from the information provided by the health care provider.

(5) If the pool balance cannot accommodate the amount needed, the employee shall be refunded one-third the balance of the pool.

(6) An employee who is planning to retire and who has contributed sick leave to the pool may not have his or her contributions returned in order to receive a retirement credit.

(b) Procedures.

(1) The employee shall complete a withdrawal of contribution form prescribed by the pool administrator.

(2) The human resources officer shall verify all sick leave balances and the date and time all accrued sick leave was or will be exhausted.

(3) The pool administrator shall review the withdrawal of contribution form and approve or deny the transfer of hours from the sick leave pool to the employee's personal sick leave account.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 26, 2008.

TRD-200805231
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

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CHAPTER 17. VEHICLE TITLES AND REGISTRATION
SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

The Texas Department of Transportation (department) adopts the repeal of §17.40, Marketing of Specialty License Plates through a Private Vendor and simultaneously proposes new §17.40, Marketing of Specialty License Plates through a Private Vendor; new §17.41, Removal of License Plates and Registration Insignia upon Sale of Motor Vehicle; and amendments to §17.51, Registration Reciprocity Agreements. New §17.40 and the amendments to §17.51 are adopted with changes to the proposed text as published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6116). The repeal of §17.40, and new §17.41, are adopted without changes to the proposed text and will not be republished.

EXPLANATION OF ADOPTED REPEAL, AMENDMENTS, AND NEW SECTIONS

The repeal, amendments, and new sections are necessary to implement the provisions of House Bill 310, 80th Legislature, Regular Session, 2007; update and clarify existing information regarding specialty license plates that are marketed by a private vendor; and update or clarify existing information regarding apportioned registration.

House Bill 310 provided for the removal of license plates and registration insignia upon the sale or transfer of a motor vehicle, the disposition of the removed license plates, the transfer of removed license plates to another vehicle, and the process for issuance of a vehicle transit permit to buyers of vehicles from which the license plates were removed.

Section 17.40 is repealed and replaced with new §17.40. Extensive rearrangement of the existing subsections is made to improve readability. Numerous other subsections are added. New §17.40 provides the application requirements and process for approval of new designs submitted by the marketing vendor; clarifies the different types of replacements and the associated

fees; provides the vendor the ability to request a redesign of a previously-approved vendor specialty license plate design; establishes the requirements for replacement and associated replacement fees, including replacement of stolen license plates; and adds a process and fees for a person requesting "restyled" license plates. The process for application review and approval of vendor specialty license plates is intended to be similar to the process described in 43 TAC §17.28(i) for development of new non-vendor specialty license plates. Throughout new §17.40, the term "vendor-marketed specialty license plates" has been simplified to "vendor specialty license plates."

New §17.40(a), Purpose and scope, provides a general description of the section, the statutory citations that authorize the vendor marketing program, and clarification of terminology used in the section.

New §17.40(b), Application for approval of vendor specialty license plate designs, clarifies that each license plate design the vendor proposes to market must be approved by the department. This subsection also provides the requirements for submission of a written application by the vendor and the items that must accompany the application.

New §17.40(c), Review and approval process, establishes that the specialty license plate committee established under 43 TAC §17.28(i) will review the applications and additional documentation provided with the vendor's application. It allows the committee to request additional information and provides that a decision on an application may be postponed until the next committee meeting if the requested additional information is not received.

New §17.40(d), Committee recommendation and public comment, provides the criteria that the committee will use when reviewing and making a recommendation on the proposed vendor specialty license plate designs. Section 17.40(d) also provides that if the committee recommends the issuance of the vendor's proposed specialty license plate design, the design will be posted on the department's website for a 10-day period to receive public comments. The department will notify all specialty plate organizations and the sponsoring agencies who administer license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting, comment period, and manner for submitting public comments.

New §17.40(e), Final approval and specialty license plate issuance, provides that the executive director will make the final decision on the proposed vendor specialty license plate design. If approved, the vendor must submit a non-refundable start-up fee before any action may be taken to process the license plate design. The approved license plate design may not be the final design and the department will work with the vendor to finalize the design to ensure it complies with all format and license plate specifications.

New §17.40(f), Redesign of vendor specialty license plates, allows the vendor to redesign a department-approved vendor license plate by submitting a request and paying a fee that covers the administrative costs of the redesign.

New §17.40(g), Multi-year vendor specialty license plates, allows purchasers the option of purchasing vendor license plates for a one, five, or ten-year period which is the same option as under the repealed §17.40(b).

New §17.40(h), License plate categories and associated fees, provides the categories of specialty license plates that will be marketed by the vendor and the schedule of fees for each category. The vendor will offer the same three categories of specialty license plates as under repealed §17.40(d), but with different names: custom, premium, and luxury. The new names more clearly describe the type of license plates. The name for "Color/Themed" license plates in new §17.40(h)(1) is changed to "custom" license plates because the customer will be able to customize their license plates using the colors and themes available. In new §17.40(h)(2) the name for "Limited Edition/Special Event" license plates is changed to "premium" license plates because a premium choice for personalization will be available. The name for "Luxury/Prestige" license plates in new §17.40(h)(3) is shortened to "luxury" license plates. The fee schedule remains the same as it was in repealed §17.40(d).

New §17.40(i), Payment of fees, contains the same substance as repealed §17.40(c). It provides that the specialty license plate fee is paid directly to the vendor and that the fees for multi-year specialty license plate fees must be paid at one time to benefit from the reduced fee. The language also provides that specialty license plate fees are in addition to the annual registration fees.

New §17.40(j), Refunds, contains the same substance as repealed §17.40(a). This subsection describes a refund policy for vendor specialty license plates that is identical to the policy for specialty license plates approved by the department.

New §17.40(k), Replacement, reorganizes repealed §17.40(e) and adds new substance. The reorganized portion provides a replacement policy for vendor specialty license plates that is the same as the replacement policy for specialty license plates approved by the department. The application for replacement must be made directly to a county tax assessor-collector. Upon application and payment of the fee for replacement of a license plate an interim temporary tag will be issued by the county tax assessor-collector for use on the vehicle until the vendor specialty license plate has been remanufactured.

New §17.40(k) also adds provisions for no-charge replacements and optional replacements. The term "destroyed" has been replaced with "mutilated" to be consistent with the statutory terminology in Transportation Code, §502.184. Additionally, the fee for lost or mutilated vendor specialty license plates has been changed to reflect that the $5.30 statutory replacement fee, as provided under Transportation Code, §502.184, for all license plates that are lost or mutilated, will be assessed rather than the fee for replacement of a personalized license plate provided in Transportation Code, §504.101(d).

New §17.40(k)(3) clarifies that vendor specialty license plates will be replaced at no charge every seven years. This period is established to ensure that the license plates meet the requirements established in Transportation Code, §502.052 that license plates be reflectorized to provide effective and dependable brightness for the period for which the plates are issued.

New §17.40(k)(4), Optional replacements, establishes that a $30 optional replacement fee will be required if the owner of a vendor specialty license plate chooses to obtain a replacement for any reason, other than the license plate being lost or mutilated, before the seventh anniversary of the date of initial issuance.

New §17.40(k)(5), Interim replacement tags, establishes that if the vendor specialty license plates are lost or mutilated to such an extent that they are unusable, replacement license plates will need to be remanufactured and the county tax assessor-collector will issue interim replacement tags until the replacements are available.

New §17.40(k)(6), Stolen vendor specialty license plates, establishes that a replacement vendor specialty license plate indicating the same license plate number will not be issued if a vehicle displaying the vendor specialty license plate or the actual vendor specialty license plate has been stolen. Not issuing a duplicate of a license plate number that has been reported stolen aids law enforcement and the vehicle owner by lessening the possibility of law enforcement incorrectly identifying a vehicle as stolen and stopping or apprehending the owner in error.

New §17.40(l), Transfer of vendor specialty license plates, contains the same substance as repealed §17.40(f). This section includes a transfer policy for vendor specialty license plates that tracks the provisions of §17.28(e) relating to the transfer policy for specialty plates approved by the department. The language explains when vendor specialty license plates may be transferred between vehicles and prohibits the transfer of vendor specialty license plates between owners.

New §17.40(m), Gift plates, contains the same substance as repealed §17.40(g). This subsection provides a policy for the purchase of vendor specialty license plates as a gift and the procedure for the use of the plates on a motor vehicle. This procedure includes information that will track the name of the recipient and the vehicle identification of the recipient's vehicle.

New §17.40(n), Restyled vendor specialty license plates, advises owners that they may request a restyled vendor specialty license plate and the fees for restyled license plates based on the category of license plate originally purchased. A restyled license plate is a license plate of a different style, but one that is within the same price category and has the same alpha-numeric characters as the originally purchased vendor specialty license plate. The fee for a restyled "custom" license plate is $95, the fee for a restyled "premium" license plate is $125, and the fee for a restyled "luxury" license plate is $145.

New §17.41, Removal of License Plates and Registration Insignia upon Sale of Motor Vehicle, addresses the provisions of House Bill 310.

New §17.41(a), Purpose, explains the purpose of the section to facilitate the transfer of plates to another vehicle owned by the same owner.

New §17.41(b), Disposition of removed license plates, provides information relating to removal and transfer of license plates when a vehicle is sold, traded, or transferred to a licensed motor vehicle dealer or in a private transaction between non-dealers. Section 17.41(b) also provides the criteria for transferring the removed license plates to another vehicle, addresses disposal of removed license plates if they are retained by the vehicle owner, and retention by the vehicle owner for future use on another motor vehicle.

New §17.41(c), Vehicle transit permit, provides information about how a motor vehicle buyer may obtain a vehicle transit permit that authorizes legal movement of the vehicle from the place of purchase when the seller has removed the license plates and registration insignia. The vehicle transit permit is valid for temporary movement of the vehicle for a five-day period, as provided by Transportation Code, §502.454, and must be kept in the vehicle at all times.

Amendments to §17.51, Registration Reciprocity Agreements, add provisions for denial or suspension of apportioned registration as required under the Federal Motor Carrier Safety Administration's (FMCSA) Performance and Registration Information Systems Management program (PRISM) and established by the Transportation Equity Act for the 21st Century (P.L. 105-178). The PRISM system allows information to be shared among participating International Registration Plan (IRP) vehicle registration agencies and the FMCSA to check the safety rating of motor carriers prior to issuing or renewing apportioned registration.

The department will begin piloting the PRISM program in June 2008, including denial or suspension of a registrant's apportioned registration if the registrant or the commercial vehicle being registered has been deemed to be unsafe and placed out of business by the FMCSA. In addition, the department will begin gathering necessary data as required under PRISM during this pilot period. Full implementation will not occur until June 2009.

Amendments to §17.51 also delete all references to temporary operating authority (TOA) permits because the department no longer issues these permits. The department has implemented an automated system for credentialing apportioned motor carriers (TxIRP) that allows for the electronic issuance of a temporary cab card, eliminating the need for TOA permits. The temporary cab card is similar to a TOA permit, but enables the department to better ensure that operating authority is issued only to legitimate motor carriers. Through the automated system, the department gained the capability to electronically issue a temporary cab card to a motor carrier after an interim application for title or registration is submitted. Before the implementation of the automated system, paper TOA permits were issued by multiple entities and could be obtained by a carrier who had not yet submitted an application for title or registration to the department. Some carriers used this process to circumvent the title and apportioned registration requirements and failed to apply for title or pay registration fees for operation of the vehicle as required. With the automated system, the department is better able to audit the temporary cab cards and assist law enforcement in verifying the validity of a motor carrier's registration.

Throughout §17.51, the term "mileage" is changed to "distance" since some carriers measure the distance traveled in kilometers rather than miles. As defined, the term "distance" encompasses distances measured in either miles or kilometers. Additionally, throughout §17.51 the decision-making process for cancellation, enforcement of cancellation, conference, appeal, and reinstatement of cancelled registration is amended to add that in addition to the director, a designee of the director may act.

Additional amendments to §17.51 update terminology to be consistent with the terminology used in the International Registration Plan (IRP) and update or clarify existing information.

Amendments to §17.51(a), Purpose, clarify that the department may enter into agreements relating to the apportionment of registration with foreign countries, as well as with other jurisdictions.

Amendments to §17.51(b), Definitions, add a definition of "distance" established in the IRP Plan that can be applied regardless of whether the distance traveled is measured in miles or kilometers. Subsequent paragraphs are renumbered.

Amendments to §17.51(b)(6) revise the name of the temporary permit that may be issued to motor carriers from "temporary operating authority" to "temporary cab card", and update the length of time for which the permit is valid.

Amendments to §17.51(c)(2)(A) correct terminology.

Amendments to §17.51(c)(2)(B) provide that the department adopts the most currently adopted edition of the International

Registration Plan. The specific version adopted was previously cited; however, since the plan provisions are continually amended by plan members, the revised language is more accurate.

Amendments to §17.51(c)(2)(B)(iv) clarify an "established place of business" must be located in this state for purposes of obtaining apportioned registration and delete the specific location within the IRP plan of the definition of "established place of business" as the location can change when the plan is amended.

Amendments to §17.51(c)(2)(D) update how the fees associated with apportioned registration applications may be submitted. Registrants may now submit funds by personal check or using an electronic funds transfer process through an automated clearinghouse.

Amendments to §17.51(c)(2)(F) clarify that registrants must provide operational records for each vehicle in their fleet; update terminology from "recap" to "summary"; and add that registrants must provide distance summaries on an annual basis, as well as on a monthly and quarterly basis in accordance with the IRP.

Amendments to §17.51(c)(2)(G) clarify that if the department assesses additional registration fees after conducting an audit, the assessment could be up to 100% of the Texas intrastate registration fees in accordance with IRP. In addition, reference to temporary operating authority (TOA) is deleted since the department no longer issues TOAs.

Amendments to §17.51(c)(2)(I) delete the specific location within the IRP plan of the definition of "established place of business" as the location can change when the plan is amended.

Amendments to §17.51(c)(2)(J)(i) clarify that the registrant's license plates will be cancelled if additional fees assessed are not paid by the date prescribed in the notice.

Amendments to §17.51(c)(2)(J)(ii) indicate that conferences will now be conducted at division headquarters in Austin, rather than at a regional office. Previously, the scheduling and conferences were conducted by a VTR Regional Office supervisor at a regional office. This function has now been centralized so that the few inquiries will be consistently answered by the same staff.

Amendments to §17.51(c)(2)(J)(iii) clarify that an appeal hearing will only be conducted if the registrant makes the request for the hearing within the 20-day period prescribed for submitting the request.

Amendments to §17.51(c)(2)(K) eliminate the requirement that all previously issued apportioned license plates, cab cards, and TOAs have been surrendered to the department before apportioned registration may be reinstated. Surrender of these items is no longer required by the department before reinstatement, because in some cases, such as when the document was lost or destroyed, surrender is not possible.

New §17.51(c)(2)(L) adds that the department will deny issuance of a temporary cab card, suspend apportioned registration, or deny initial or renewal of a registrant's apportioned registration in accordance with the Federal Motor Carrier Safety Administration's (FMCSA) Performance and Registration Information Systems Management (PRISM) program. This program provides the ability for the department to check the safety rating of motor carriers provided by FMCSA before issuing or renewing a temporary cab card or apportioned license plates. An approved safety rating from FMCSA will be required before authorization for or reinstatement of apportioned registration to a motor carrier that was previously denied or suspended under the FMCSA's PRISM program. Former §17.51 (c)(2)(L) is deleted in it's entirety as the department no longer issues TOAs.

New §17.51(c)(2)(M) provides the procedure for obtaining a temporary cab card. Timeframes are established for submission of the original application documents and fees to the department after a temporary cab card has been authorized and the penalties for failure to comply with these timeframes are also prescribed.

COMMENTS

No comments on the proposed repeal, amendments, and new sections were received. However, the department finds it necessary to change §17.40(d)(1)(C) by adding §17.40(d)(1)(C)(iii) to provide that the specialty license plate committee recommendation will take into account whether the proposed vendor specialty license plate design can accommodate the International Symbol of Access (ISA) as required by Transportation Code, §504.201(h). In addition, §17.40(e)(1) and (2) are changed by adding "or the director's designee, not below the level of Assistant Executive Director," when referring to final approval of an application for a new vendor specialty license plate design. Allowing other executive staff to approve the new specialty license plate designs will provide a streamlined, efficient, and effective process which will benefit the state by providing revenue to the general revenue fund.

In addition, a typographical error was found in §17.51(c)(2)(L)(i)(II). The word "provide" is corrected to "provided."

43 TAC §17.40

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §502.0021, which authorizes the department to adopt rules governing the issuance of motor vehicle registration; and Transportation Code, §502.054, which authorizes the department to adopt rules to carry out the International Registration Plan.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.052, §502.054, §502.184, §§502.451 - 502.456, §504.201, and §§504.851 - 504.852.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

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43 TAC §§17.40, 17.41, 17.51

STATUTORY AUTHORITY

The amendments and new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §502.0021, which authorizes the department to adopt rules governing the issuance of motor vehicle registration; and Transportation Code, §502.054, which authorizes the department to adopt rules to carry out the International Registration Plan.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.052, §502.054, §502.184, §§502.451 - 502.456, §504.201, and §§504.851 - 504.852.

§17.40. Marketing of Specialty License Plates through a Private Vendor.

(a) Purpose and Scope. The department will enter into a contract with a private vendor to market department-approved specialty license plates in accordance with Transportation Code, §§504.851 - 504.852. This section sets out the procedure for approval of the design, purchase, and replacement of vendor specialty license plates. In this section, the license plates marketed by the vendor are referred to as vendor specialty license plates.

(b) Application for approval of vendor specialty license plate designs.

(1) Approval required. The vendor shall obtain the approval of the department for each license plate design the vendor proposes to market in accordance with this section and the contract entered into between the vendor and the department.

(2) Application. The vendor must submit a written application on a form approved by the director to the department for approval of each license plate design the vendor proposes to market. The application must include:

(A) a draft design of the specialty license plate;

(B) projected sales of the plate, including an explanation of how the projected figure was determined;

(C) a marketing plan for the plate including a description of the target market;

(D) a licensing agreement from the appropriate third party for any design or design element that is intellectual property; and

(E) other information necessary for the specialty license plate committee to reach a decision regarding approval of the requested vendor specialty plate.

(c) Review and approval process. The specialty license plate committee established under §17.28(i) of this subchapter will review vendor specialty license plate applications.

(1) Committee review. The committee:

(A) will not consider incomplete applications; and

(B) may request additional information from the vendor to reach a decision.

(2) Postponement of decision for additional information.

(A) If the committee reviews an application and determines that additional information is needed, it will postpone the decision on the application until its next meeting.

(B) If the additional requested information is not received before the next committee meeting, the committee will not consider the application and will return it to the vendor as incomplete.

(d) Committee recommendation and public comment.

(1) Recommendation. The recommendation of the committee will be based on:

(A) projected sales of the license plate as demonstrated in the marketing plan and by the listing of target purchasers;

(B) compliance with Transportation Code, §504.851 and §504.852;

(C) the proposed license plate design, including:

(i) whether the design meets the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness to ensure that the proposed plate complies with Transportation Code, §504.852(c);

(iii) whether the license plate design can accommodate the International Symbol of Access (ISA) as required by Transportation Code, §504.201(h); and

(iv) other information provided during the application process.

(2) Public comment on proposed design. If the committee recommends the issuance of the proposed vendor specialty license plate design, notice of the proposed design will be posted on the department's web site for public comment. The department simultaneously will notify all specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design must be submitted in writing and must be received within 10 days after the date that the notice is first posted on the department's web site.

(e) Final approval and specialty license plate issuance.

(1) Approval. The executive director of the department, or the executive director's designee, not below the level of Assistant Executive Director, will make the final decision on the vendor's specialty license plate application based on the committee's recommendation and on all comments received during the period prescribed by subsection (d)(2) of this section.

(2) Application not approved. If the vendor's application is not approved by the executive director, or the executive director's designees, the vendor must submit a new application and supporting documentation for the design to be considered again by the committee.

(3) Issuance of approved specialty plates.

(A) If the vendor's specialty license plate is approved, the applicant must submit the non-refundable start-up fee before any further design and processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The department has final approval of all specialty license plate designs and will provide guidance on the submitted draft design to ensure compliance with the format and license plate specifications.

(f) Redesign of vendor specialty license plates.

(1) On receipt of a written request from the vendor, the department will allow a redesign of a vendor specialty license plate.

(2) The vendor must pay the redesign administrative costs as provided in the contract between the vendor and the department.

(g) Multi-year vendor specialty license plates. Purchasers will have the option of purchasing vendor specialty license plates for a one-year, five-year, or ten-year period.

(h) License plate categories and associated fees. The categories and the associated fees for vendor specialty plates are set out in this subsection.

(1) Custom license plates. Custom license plates include license plates with a variety of pre-approved background and character color combinations that may be customized with either three alpha and two numeric characters or two numeric and three alpha characters. The fees for issuance of custom license plates are $95 for one year, $295 for five years, and $395 for ten years.

(2) Premium license plates. Premium license plates may be customized with up to six alphanumeric characters on colored backgrounds or designs approved by the department. Premium license plates will be made available to coincide with extraordinary events of public interest to Texas registrants. The fees for issuance of premium license plates are $195 for one year, $495 for five years, and $595 for ten years.

(3) Luxury license plates. Luxury license plates may be customized with up to six alphanumeric characters on colored backgrounds or designs approved by the department. The fees for issuance of luxury license plates are $395 for one year, $695 for five years, and $795 for ten years.

(i) Payment of fees.

(1) Payment of specialty license plate fees. The fees for issuance of vendor specialty license plates will be paid directly to the vendor for the license plate category and period selected by the purchaser. A person who purchases a multi-year vendor specialty license plate must pay upon purchase the full fee which includes the renewal fees.

(2) Payment of statutory registration fees. To be valid for use on a motor vehicle, the license plate owner is required to pay, in addition to the vendor specialty license plate fees, any statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(j) Refunds. Fees for vendor specialty license plate fees will not be refunded after an application is submitted to the vendor and the department has approved issuance of the license plate.

(k) Replacement.

(1) Application. An owner must apply directly to the county tax assessor-collector for the issuance of replacement vendor specialty license plates and must pay the fee described in paragraph (2), (3) or (4) of this subsection, whichever applies.

(2) Lost or mutilated vendor specialty license plates. To replace vendor specialty license plates that are lost or mutilated, the owner must pay the statutory replacement fee provided in Transportation Code, §502.184.

(3) No-charge replacement. The owner of vendor specialty license plates will receive at no charge replacement license plates as follows:

(A) one set of replacement license plates on or after the seventh anniversary after the date of initial issuance; and

(B) one set of replacement license plates seven years after the date the set of license plates were issued in accordance with subparagraph (A) of this paragraph.

(4) Optional replacements. An owner of a vendor specialty license plate may replace vendor specialty license plates before the seventh anniversary after the date of issuance by submitting a request to the county tax assessor-collector accompanied by the payment of a $30 fee.

(5) Interim replacement tags. If the vendor specialty license plates are lost or mutilated to such an extent that they are unusable, replacement license plates will need to be remanufactured. The county tax assessor-collector will issue interim replacement tags for use until the replacements are available. The owner's vendor specialty license plate number will be shown on the interim replacement tags.

(6) Stolen vendor specialty license plates. The county tax assessor-collector will not approve the issuance of replacement vendor specialty license plates with the same license plate number if the department's records indicate that the vehicle displaying that license plate number was reported stolen or the license plates themselves were reported stolen.

(l) Transfer of vendor specialty license plates.

(1) Transfer between vehicles. The owner of a vehicle with vendor specialty license plates may transfer the license plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(A) is titled or leased in the owner's name; and

(B) meets the vehicle classification requirements for that particular specialty license plate.

(2) Transfer between owners. Vendor specialty license plates may not be transferred between persons.

(m) Gift plates.

(1) A person may purchase plates as a gift for another person if the purchaser submits a statement that provides:

(A) the purchaser's name and address;

(B) the name and address of the person who will receive the plates; and

(C) the vehicle identification number of the vehicle on which the plates will be displayed or a statement that the plates will not be displayed on a vehicle.

(2) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(n) Restyled vendor specialty license plates. A person who has purchased a multi-year vendor specialty license plate may request a restyled license plate at any time during the term of the plate.

(1) For the purposes of this subsection, "restyled license plate" is a vendor specialty license plate that has a different style from the originally purchased vendor specialty license plate but:

(A) is within the same price category; and

(B) has the same alpha-numeric characters and expiration date as the previously issued multi-year license plates.

(2) The fee for each restyled license plate is:

(A) $95 for a custom license plate as described in subsection (h)(1) of this section;

(B) $125 for a premium license plate as described in subsection (h)(2) of this section;

(C) $145 for a luxury license plate as described in subsection (h)(3) of this section.

§17.51. Registration Reciprocity Agreements.

(a) Purpose. To promote and encourage the fullest possible use of the highway system and contribute to the economic development and growth of the State of Texas and its residents, the department is authorized by Transportation Code, §502.054, to enter into agreements with duly authorized officials of other jurisdictions, including any state of the United States, the District of Columbia, a foreign country, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country, and to provide for the registration of vehicles by Texas residents and nonresidents on an allocation or distance apportionment basis, and to grant exemptions from the payment of registration fees by nonresidents if the grants are reciprocal to Texas residents.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cab card--The apportioned vehicle registration receipt that contains, but is not limited to, the vehicle description and the registered weight at which the vehicle may operate in each jurisdiction.

(2) Department--The Texas Department of Transportation.

(3) Director--The director of the Vehicle Titles and Registration Division, Texas Department of Transportation.

(4) Distance--The distance an apportioned motor vehicle is:

(A) expected to travel in a member jurisdiction during a registration year as reported by an applicant; or

(B) actually operated in a member jurisdiction during a reporting period.

(5) Executive director--The chief executive officer of the department.

(6) Temporary cab card--A temporary registration permit authorized by the department that allows the operation of a vehicle for 30 days subject to all rights and privileges afforded to a vehicle displaying apportioned registration.

(c) Multilateral agreements.

(1) Authority. The executive director may on behalf of the department enter a multilateral agreement with the duly authorized officials of two or more other jurisdictions to carry out the purpose of this section.

(2) International Registration Plan.

(A) Applicability. The International Registration Plan is a registration reciprocity agreement among states of the United States and other jurisdictions providing for payment of registration fees on the basis of fleet distance operated in various jurisdictions. Its purpose is to promote and encourage the fullest possible use of the highway system by authorizing apportioned registration for commercial motor vehicles and payment of appropriate vehicle registration fees and thus contributing to the economic development and growth of the member jurisdictions.

(B) Adoption. The department adopts by reference the most currently adopted edition of the International Registration Plan (IRP). This document will be periodically amended by its members. Copies of the document are available for review in the Vehicle Titles and Registration Division, Texas Department of Transportation, 4000 Jackson Avenue, Austin. Copies are also available on request. The following words and terms, when used in the IRP or in this subparagraph, shall have the following meanings, unless the context clearly indicates otherwise.

(i) Apportionable vehicle--Any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, buses used in transportation of chartered parties, and government-owned vehicles, used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and used either for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property and:

(I) is a power unit having two axles and a gross vehicle weight or registered gross vehicle weight in excess of 26,000 pounds or 11,793.401 kilograms;

(II) is a power unit having three or more axles, regardless of weight;

(III) is used in combination, when the weight of such combination exceeds 26,000 pounds or 11,793.401 kilograms gross vehicle weight; or

(IV) at the option of the registrant, trucks and truck tractors, and combinations of vehicles having a gross vehicle weight of 26,000 pounds or 11,793.401 kilograms or less and buses used in transportation of chartered parties.

(ii) Commercial vehicle--A vehicle or combination designed and used for the transportation of persons or property in furtherance of any commercial enterprise, for hire or not for hire.

(iii) Erroneous issuance--Apportioned registration issued based on erroneous information provided to the department.

(iv) Established place of business--A physical structure owned or leased within the state of Texas by the applicant or fleet registrant and maintained in accordance with the provisions of the International Registration Plan.

(v) Fleet distance--All distance operated by an apportionable vehicle or vehicles used to calculate registration fees for the various jurisdictions.

(C) Application.

(i) An applicant must submit an application to the department on a form prescribed by the director together with additional documentation as required by the director.

(ii) Upon approval of the application, the department will compute the appropriate registration fees and notify the registrant.

(D) Fees. Upon receipt of the applicable fees in the form of a check, cashier's check, money order, or electronic funds transfer through an automated clearinghouse (ACH) made payable in United States funds, the department will issue one license plate and cab card for each vehicle registered.

(E) Display.

(i) The license plate issued to a power unit shall be installed on the front of the vehicle, and the license plate issued for a trailer shall be installed on the rear of the vehicle.

(ii) The cab card shall be carried at all times in the vehicle in accordance with Transportation Code, §621.002.

(F) Audit. An audit of the registrant's vehicle operational records may be conducted by the department according to the

IRP provisions. Upon request, the registrant shall provide the operational records of each vehicle for audit in unit number order, in sequence by date, and including, but not limited to, a summary of distance traveled by each individual truck on a monthly, quarterly, and annual basis with distance totaled separately for each jurisdiction in which the vehicle traveled.

(G) Assessment. The department may assess additional registration fees of up to 100% of the Texas registration fees, if an audit conducted under subparagraph (F) of this paragraph reveals that:

(i) the operational records indicate that the vehicle did not generate interstate distance in two or more member jurisdictions for the distance reporting period supporting the application being audited, plus the six-month period immediately following that distance reporting period;

(ii) the registrant failed to provide complete operational records; or

(iii) the distance must be adjusted, and the adjustment results in a shortage of registration fees due Texas or any other IRP jurisdiction.

(H) Refunds. If an audit conducted under subparagraph (F) of this paragraph reveals an overpayment of fees to Texas or any other IRP jurisdiction, the department will refund the overpayment of registration fees in accordance with Transportation Code, §502.183, and IRP guidelines. Any registration fees refunded to a carrier for another jurisdiction will be deducted from registration fees collected and transmitted to that jurisdiction.

(I) Cancellation. The director or the director's designee may cancel a registrant's apportioned registration and all privileges provided by the IRP if the registrant:

(i) submits payment in the form of a check that is dishonored;

(ii) files or provides erroneous information to the department; or

(iii) fails to:

(I) remit appropriate fees due each jurisdiction in which the registrant is authorized to operate;

(II) meet the requirements of the IRP concerning established place of business;

(III) provide operational records in accordance with subparagraph (F) of this paragraph;

(IV) provide an acceptable source document as specified in the IRP; or

(V) pay an assessment pursuant to subparagraph (G) of this paragraph.

(J) Enforcement of cancelled registration.

(i) Notice. If a registrant is assessed additional registration fees, as provided in subparagraph (G) of this paragraph, and the additional fees are not paid by the due date provided in the notice or it is determined that a registrant's apportioned license plates and privileges should be canceled, as provided in subparagraph (I) of this paragraph, the director or the director's designee will mail a notice by certified mail to the last known address of the registrant. The notice will state the facts underlying the assessment or cancellation, the effective date of the assessment or cancellation, and the right of the registrant to request a conference as provided in clause (ii) of this subparagraph.

(ii) Conference. A registrant may request a conference upon receipt of a notice issued as provided by clause (i) of this subparagraph. The request must be made in writing to the director or the director's designee within 30 days of the date of the notice. If timely requested, the conference will be scheduled and conducted by the director or the director's designee at division headquarters in Austin and will serve to abate the assessment or cancellation unless and until that assessment or cancellation is affirmed or disaffirmed by the director or the director's designee. In the event matters are resolved in the registrant's favor, the director or the director's designee will mail the registrant a notice of withdrawal, notifying the registrant that the assessment or cancellation is withdrawn, and stating the basis for that action. In the event matters are not resolved in the registrant's favor, the director or the director's designee will issue a ruling reaffirming the department's assessment of additional registration fees or cancellation of apportioned plates and privileges. The registrant has the right to appeal in accordance with clause (iii) of this subparagraph.

(iii) Appeal. If a conference held in accordance with clause (ii) of this subparagraph fails to resolve matters in the registrant's favor, the registrant may request an administrative hearing. The request must be in writing and must be received by the director no later than the 20th day following the date of the ruling issued under clause (ii) of this subparagraph. If requested within the designated period, the hearing will be initiated by the department and will be conducted in accordance with §§1.21 et seq. of this title (relating to Procedures in Contested Cases). Assessment or cancellation is abated unless and until affirmed or disaffirmed by order of the Texas Transportation Commission.

(K) Reinstatement.

(i) The director or the director's designee will reinstate apportioned registration to a previously canceled registrant if all applicable fees and assessments due on the previously canceled apportioned account have been paid and the applicant provides proof of an acceptable recordkeeping system for a period of no less than 60 days.

(ii) The application for the following registration year will be processed in accordance with the provisions of the IRP.

(L) Denial of apportioned registration for safety reasons. The department will comply with the requirements of the Performance and Registration Information Systems Management program (PRISM) administered by the Federal Motor Carrier Safety Administration (FMCSA).

(i) Denial or suspension of apportioned registration. Upon notification from the FMCSA that a carrier has been placed out of service for safety violations, the department will:

(I) deny initial issuance of apportioned registration;

(II) deny authorization for a temporary cab card, as provided for in subparagraph (M) of this subsection;

(III) deny renewal of apportioned registration; or

(IV) suspend current apportioned registration.

(ii) Issuance after denial of registration or reinstatement of suspended registration. The director or the director's designee will reinstate or accept an initial or renewal application for apportioned registration from a registrant who was suspended or denied registration under clause (i) of this subparagraph upon presentation of a Certificate of Compliance from FMCSA, in addition to all other required documentation and payment of fees.

(M) Temporary cab card.

(i) Application. The department may authorize issuance of a temporary cab card to a motor carrier with an established Texas apportioned account for a vehicle upon proper submission of all required documentation, a completed application, and all fees for either:

(I) Texas Certificate of Title as prescribed by Transportation Code, Chapter 501 and §17.3 of this chapter, or

(II) Registration Purposes Only as provided for in Transportation Code, §501.029 and §17.22(b)(4) of this subchapter.

(ii) Title application. A registrant who is applying for a certificate of title as provided for in subsection (c)(2)(L)(i)(I) of this section and is requesting authorization for a temporary cab card, must submit a photocopy of the title application receipt issued by the county tax assessor-collectors office to a Vehicle Titles and Registration Division Regional Office by email, fax, overnight mail or in person.

(iii) Registration Purposes Only. A registrant who is applying for Registration Purposes Only under clause (i)(II) of this subparagraph and is requesting authorization for a temporary cab card, must submit an application and all additional original documents or copies of original documents required by the director to a Vehicle Titles and Registration Division Regional Office by email, fax, or overnight mail or in person.

(iv) Department approval. On department approval of the submitted documents, the department will send notice to the registrant to finalize the transaction and make payment of applicable registration fees.

(v) Finalization and payment of fees. To finalize the transaction and print the temporary cab card, the registrant may compute the registration fees through the department's apportioned registration software application, TxIRP system, and

(I) make payment of the applicable registration fees in the form of a check, cashier's check, money order, or electronic funds transfer through an automated clearinghouse (ACH) payable to the department in United States funds; and

(II) afterwards, mail or deliver payment of the certificate of title application fee in the form of a check, certified cashier's check, or money order payable to the county tax assessor collector in the registrant's county of residency and originals of all copied documents previously submitted.

(vi) Deadline. The original documents and payment must be received by the Vehicle Titles and Registration Division Regional Office within 72-hours after the time that the office notified the registrant of the approval to print a temporary cab card as provided in clause (iv) of this subparagraph.

(vii) Failure to meet deadline. If the registrant fails to submit the original documents and required payment within the time prescribed by clause (vi) of this subparagraph, the registrant's privilege to use this expedited process to obtain a temporary cab card will be denied by the department for a period of six months from the date of approval to print the temporary cab card.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

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CHAPTER 25. TRAFFIC OPERATIONS
SUBCHAPTER A. GENERAL

43 TAC §25.1

The Texas Department of Transportation (department) adopts amendments to §25.1, Texas Manual on Uniform Traffic Control Devices (MUTCD). The amendments to §25.1 are adopted without changes to the proposed text as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5512) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The amendments to §25.1 adopt by reference the 2006 Texas MUTCD, Revision 1 and revise the department's Internet website address.

The Texas MUTCD is amended periodically to maintain substantial conformance with the National MUTCD to allow use of a single manual for local, state, and Federal-aid highway projects. The National MUTCD defines the standards used by road managers nationwide to install and maintain traffic control devices on all streets and highways open to public travel. The National MUTCD is published by the Federal Highway Administration (FHWA) under Title 23, Code of Federal Regulations, Part 655, Subpart F.

The FHWA recently completed two amendments to the National MUTCD and Texas is required to incorporate these changes into the state manual. The federal changes are included in Revision 1 of the manual.

The changes to the Texas MUTCD, Revision 1 include changes to the introduction by incorporating new federal language regarding the term "open to public travel." There has been confusion in the past about the applicability of the Texas MUTCD to roads not maintained by public agencies such as toll roads, non-gated residential developments, shopping centers, airports, etc. The FHWA clarified this through a final rule issued on January 16, 2007 which provided definitions and discussion on the applicability of the manual to private roads open to public travel. Text will be added to the introduction section of the manual to detail the types of roads "open to the public" and add new definitions for "private property open to public travel" and "public facility." "Open to the public" is defined in the Texas MUTCD to include roadways and areas where the public is allowed to travel without restriction. The new text is added to the Texas MUTCD to bring it into compliance with this federal change.

New Section 2A.09 is added to the Texas MUTCD, Revision 1 regarding required minimum standards for sign retroreflectivity. The FHWA issued its final rule on sign retroreflectivity with an effective date of January 22, 2008. States are required to adopt this new rule within two years and be in full compliance with the new federal requirements by the beginning of 2018. This change will incorporate new text and compliance deadlines.

Revisions in the Texas MUTCD, in Sections 1A.11 and 6F.01, reflect the current department website address.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which authorizes the Texas Transportation Commission to promulgate rules for the conduct of the work of the Texas Department of Transportation. More specifically Transportation Code, §544.001 relates to the department's authority to adopt a manual of uniform traffic control devices.

CROSS REFERENCE TO STATUTE

Transportation Code, §544.001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. PROCEDURES FOR ESTABLISHING SPEED ZONES

43 TAC §§25.20 - 25.22, 25.25

The Texas Department of Transportation (department) adopts amendments to §25.20, Definitions, §25.21, Introduction, §25.22, Regulatory and Advisory Speeds, and §25.25, Application of Advisory Speeds, all concerning procedures for establishing speed zones. The amendments to §§25.20 - 25.22 and 25.25 are adopted without changes to the proposed text as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5513) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The department is required to establish procedures for establishing speed zones under Transportation Code, §544.353(e). These procedures must be followed by department staff when creating a speed limit other than the prima facie maximum allowed under state law. The procedures must also be followed by municipalities, regional mobility authorities, regional tollway authorities, and by the commanders of United States military reservations in certain circumstances. The revisions to the procedures are technical in nature and are designed to ensure that they are current and accurate. The department is also amending the rule to remove information about how to determine advisory speed limits. The statute does not require the commission adopt procedures for setting advisory speed limits, therefore, the department has determined that the Procedures for Establishing Speed Zones manual is better suited for the detailed information concerning advisory speed limits.

Amendments to §25.20, Definitions, change the definition of the term "district" by removing the reference to the current number of geographical areas. This amendment accommodates changes to the current department organizational structure.

Amendments to §25.21(b)(2)(K) clarify the authority of regional tollway authorities, regional mobility authorities, and commanding officers of United States military reservations to alter speed limits. Currently these entities are required to follow the department's speed zone procedures when altering a speed limit. To conform to the language contained in Transportation Code, §545.354(f), this subparagraph is amended to note that these entities must follow the department's speed zone procedures only when altering or setting a speed limit based on an engineering and traffic study.

Amendments to §25.21(c)(2)(B) and §25.25(b)(1)(C) remove references to the use of a ball-bank indicator for determining advisory speed restrictions on curves. The Procedures for Establishing Speed Zones manual provides detailed information on how to determine advisory speed restrictions for curves using the ball-bank indicator. Since this is an advisory speed posting, it is unnecessary to have the information in both the rules and the manual. Providing the information in the manual allows the department to address and adopt new procedures without requiring a rule change. This will allow the department to authorize the use of new technology as it becomes available.

Amendments to §25.22, Regulatory and Advisory Speeds, make various technical corrections. This includes deletion of references to sign types that are no longer in use, correcting existing references to the Texas Manual on Uniform Traffic Control Devices, and revising figures depicting typical signing practices.

Amendments to §25.25, Application of Advisory Speeds, make various technical corrections. Section 25.25(a)(2)(A) and (B) is revised to remove references to signs that are no longer in use.

Amendments to §25.25(c)(1)(A) remove an inaccurate parenthetical statement about the lack of traffic circles in Texas. The design feature is now more commonly used.

Amendments to §25.25(d)(2)(A) remove references to signs that are no longer in use.

Amendments to §25.25(e)(4)(A) make a conforming change regarding the use of the ball-bank indicator as amended in §25.25(b), relating to curves and turns.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which authorizes the Texas Transportation Commission to promulgate rules for the conduct of the work of the Texas Department of Transportation. More specifically Transportation Code, §545.353 relates to the department's authority to establish speed limits.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 545, Subchapter H.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER O. CRASH RECORDS INFORMATION SYSTEM

43 TAC §§25.975 - 25.977

The Texas Department of Transportation (department) adopts new §§25.975 - 25.977 relating to the collection, analysis, and reporting of crash records. New §§25.975 - 25.977 are adopted without changes to the proposed text as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5517) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTIONS

Senate Bill 766, 80th Legislature, Regular Session, 2007, transferred the collection and analysis of accident records from the Department of Public Safety to the Texas Department of Transportation effective October 1, 2007. The Department of Public Safety had rules contained in 37 TAC §§3.7 - 3.9 concerning crash investigations which, under Senate Bill 766, became rules of the department on October 1, 2007. The department is adopting these new rules to regulate the collection of crash information.

New §25.975, Crash Record Statistical Analysis, provides reference to the external manuals the department uses to classify motor vehicle crashes and notes that these manuals will be available on the department's web site.

The Manual on Classification of Motor Vehicle Traffic Accidents was developed under the direction of the American Association of Transportation Safety Information Professionals of the National Safety Council. The manual is published by the National Safety Council and adopted by the American Standards Institute. The use of this manual ensures that Texas conforms to national standards when classifying the severity and damage of motor vehicle crashes.

The Model Minimum Uniform Crash Criteria (MMUCC) has been developed jointly by the Governor's Highway Safety Association, the National Highway Traffic Safety Administration, the Federal Motor Carrier Safety Administration, and the Federal Highway Administration. The MMUCC provides a uniform data set for states to use when describing motor vehicle crashes. Use of the MMUCC ensures that Texas conforms to national standards and that the crash data produced by Texas can be used to create a uniform overall picture of national traffic safety conditions.

New §25.975(b) provides that only a death caused by a motor vehicle crash that occurs within 30 days of the crash will be counted as a motor vehicle fatality. This period conforms to national standards used by the National Highway Traffic Safety Administration of the United States Department of Transportation. It also provides clear guidance to law enforcement agencies as to when a death should be considered as related to a motor vehicle crash.

New §25.975(c) establishes the last business day of June of each year for the date that crash reports must to be submitted to the department to be included in the previous year's crash records statistical analysis. This provision provides law enforcement officers with approximately 180 days to submit any reports from the previous calendar year before the department closes the data base. The department must close and finalize the statistical data base in order to complete the annual motor vehicle crash report required under state law.

New §25.976, Reporting by Involved Drivers, details the requirements for drivers who are reporting crashes as required under Transportation Code, §550.061. The new section sets out the circumstances under which the statute requires a driver to report a crash that is not investigated by a law enforcement officer and provides that the report must be on a form prescribed by the department. The form is available on the department website at www.txdot.gov.

New §25.977, Reporting by Investigating Officers, details the responsibilities of a law enforcement officer when reporting a motor vehicle crash to the department. The section lists the circumstances under which an officer is required to submit a crash report on a form prescribed by the department. These criteria are established under Transportation Code, §550.062(a).

New §25.977(b) outlines the categories of information that will be included in the officer crash report form as produced by the department. These categories include information about the crash; information about all vehicles involved in the crash; information about each person involved in the crash; and other factors required for the department to comply with any state or federal reporting requirements. Section 25.977(c) indicates the form is available on the department website at www.txdot.gov.

Information about the crash will include information such as date, location, time of day, weather conditions, whether the crash occurred in a construction work zone, an officer's narrative of what actually happened, and any factors that may have contributed to the crash. Information about vehicles will include information such as the type of vehicle, license plate numbers, whether the vehicle was covered by liability insurance, whether the vehicle was towed from the crash site, and the rating of damage to the vehicle. Information about persons involved in the crash will include information such as name of each driver and passenger involved in the crash, driver's license numbers, license status, whether an alcohol specimen was taken from the driver, if any charges against a driver were filed, and whether the occupants of a vehicle were using safety belts.

These criteria comply with the categories contained in the Fatality Analysis Reporting System of the National Highway Traffic Safety Administration of the United States Department of Transportation. Use of these categories ensures that crash data collected by the state conforms to uniform national standards and that overall crash data produced by Texas can be effectively used in national crash data analysis. Collection of uniform data by all states can assist in the improvement of national traffic safety.

New §25.977(d) notes that incomplete or inaccurate crash reports, with the exception of location information, will be returned to the originating law enforcement agency for correction. This provision is added to ensure that the department's crash records data base is as complete and accurate as possible. Existing §25.972(b) allows the department to make minor corrections to a submitted crash report with inaccurate location information.

New §25.977(e) provides that an officer investigating a crash involving a commercial motor vehicle must also complete the commercial motor vehicle supplemental report on a form prescribed by the department. This ensures that the department has complete and accurate information about motor vehicle crashes involving commercial vehicles and is able to comply with all federal requirements concerning commercial motor vehicle crash data.

COMMENTS

No comments on the proposed new sections were received.

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which authorizes the Texas Transportation Commission to promulgate rules for the conduct of the work of the department, and more specifically Transportation Code, §550.064, and Transportation Code, §601.004 which authorize the department to prescribe the form of motor vehicle crash reports.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 550, and Transportation Code, §601.004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 26, 2008.

TRD-200805236
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: October 16, 2008
Proposal publication date: July 11, 2008
For further information, please call: (512) 463-8683

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

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Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal Title 16, Texas Administrative Code, Chapter 59, Continuing Education Requirements. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§59.1. Authority.

§59.3. Purpose and Applicability.

§59.10. Definitions.

§59.20. Provider Registration.

§59.21. Provider Registration Renewals.

§59.30. Continuing Education Courses.

§59.51. Responsibilities of Providers.

§59.80. Fees.

§59.90. Sanctions--Administrative Sanctions and Penalties.

TRD-200805149
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: September 24, 2008

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State Pension Review Board

Title 40, Part 17

The State Pension Review Board (PRB), beginning October 2008, will review and consider for readoption 40 TAC Chapter 601, concerning General Provisions, in accordance with Government Code, §2001.039. The rules are located in Title 40, Part 17 of the Texas Administrative Code, and contain the following sections:

§601.1. Purpose.

§601.20. Citations.

§601.30. Severability.

§601.40. Definitions.

§601.50. Office.

§601.60. Petition for Adoption of Rules.

The board will consider, among other things, whether the reasons for re-adoption of these rules continue to exist. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register*, to Christopher Hanson, Interim Executive Director, P.O. Box 13498, Austin, Texas 78711-3498 or by e-mail to prb@prb.state.tx.us.

TRD-200805161
Lynda Baker
Executive Assistant
State Pension Review Board
Filed: September 25, 2008

♦ ♦ ♦

The State Pension Review Board (PRB), beginning October 2008, will review and consider for re-adoption 40 TAC Chapter 603, concerning Officers and Meetings, in accordance with the Texas Government Code, §2001.039. The rules are located in Title 40, Part 17, of the Texas Administrative Code, and contain the following sections:

§603.1. Person for Service of Process.

§603.20. Meetings and Notices Thereof.

§603.30. Officers.

§603.40. Quorum.

§603.50. Committees.

§603.60. Robert's Rules of Order.

The board will consider, among other things, whether the reasons for re-adoption of these rules continue to exist. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register*, to Christopher Hanson, Interim Executive Director, P.O. Box 13498, Austin, Texas 78711-3498 or by e-mail to prb@prb.state.tx.us.

TRD-200805162
Lynda Baker
Executive Assistant
State Pension Review Board
Filed: September 25, 2008

♦ ♦ ♦

Texas Youth Commission

Title 37, Part 3

Pursuant to Government Code §2001.039, the Texas Youth Commission (commission) files this notice of intent to review and consider for readoption 37 TAC Chapter 111 (Contracting for Services other than Youth Services), Chapter 117 (Interstate Compact on Juveniles), and Chapter 119 (Agreements with other Agencies).

The commission will determine whether the reasons for adopting the rules under review continue to exist. Any amendments to or repeals of rules proposed as a result of this rule review will be published in future issues of the *Texas Register*, in the Proposed Rules section.

Written comments relating to this rule review will be accepted for a 30-day period following publication of this notice in the *Texas Register*. Comments should be directed to DeAnna Lloyd, Manager of Policy and Accreditation, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or by email to deanna.lloyd@tyc.state.tx.us.

TRD-200805290
Steve Foster
General Counsel
Texas Youth Commission
Filed: October 1, 2008

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Adopted Rule Reviews

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation ("Department") filed a notice of intent to review and consider for re-adoption, revision, or repeal 16 Texas Administrative Code ("TAC"), Chapter 60, Texas Commission of Licensing and Regulation. The Notice of Intent to Review as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5549).

In accordance with the requirements of Texas Government Code, §2001.039, the Department reviewed the administrative rules of 16 TAC Chapter 60, Texas Commission of Licensing and Regulation, to determine if the reasons for initially adopting the rules continue to exist. The Department determined that the rules are still essential in implementing the provisions of Texas Occupations Code, Chapter 51, and the Department recommended to the Texas Commission of Licensing and Regulation ("Commission") the re-adoption of Chapter 60.

If the Department proposes to amend 16 TAC Chapter 60 before the next four-year rule review, the proposed changes will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The Notice of Intent to Review was distributed to persons internal and external to the agency. The public comment period closed on August 11, 2008. No public comments were received in response to the notice.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC, Chapter 60, Texas Commission of Licensing and Regulation.

TRD-200805281
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: October 1, 2008

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The Texas Department of Licensing and Regulation ("Department") filed a notice of intent to review and consider for re-adoption, revision, or repeal 16 Texas Administrative Code ("TAC"), Chapter 63, Personnel Employment Services. The Notice of Intent to Review was published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5550).

In accordance with the requirements of Texas Government Code, §2001.039, the Department reviewed the administrative rules of 16 TAC Chapter 63, Personnel Employment Services, to determine if the reasons for initially adopting the rules continue to exist. The Department determined that the rules are still essential in implementing the provisions of Texas Occupations Code, Chapter 2501, and the Department recommended to the Texas Commission of Licensing and Regulation ("Commission") the re-adoption of Chapter 63.

If the Department proposes to amend 16 TAC Chapter 63 before the next four-year rule review, the proposed changes will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The Notice of Intent to Review was distributed to persons internal and external to the agency. The public comment period closed on August 11, 2008. No public comments were received in response to the notice.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 63, Personnel Employment Services.

TRD-200805282
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: October 1, 2008

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The Texas Department of Licensing and Regulation ("Department") filed a notice of intent to review and consider for re-adoption, revision, or repeal 16 Texas Administrative Code ("TAC"), Chapter 72, Staff Leasing Services. The Notice of Intent to Review was published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5550).

In accordance with the requirements of Texas Government Code, §2001.039, the Department reviewed the administrative rules of 16 TAC Chapter 72, Staff Leasing Services, to determine if the reasons for initially adopting the rules continue to exist. The Department determined that the rules are still essential in implementing the provisions of Texas Labor Code, Chapter 91, and the Department recommended to the Texas Commission of Licensing and Regulation ("Commission") the re-adoption of Chapter 72.

If the Department proposes to amend 16 TAC Chapter 72 before the next four-year rule review, the proposed changes will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The Notice of Intent to Review was distributed to persons internal and external to the agency. The public comment period closed on August 11, 2008. No public comments were received in response to the notice.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 72, Staff Leasing Services.

TRD-200805283
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: October 1, 2008

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Texas Department of Transportation

Title 43, Part 1

The Texas Department of Transportation (department) files notice of the completion of review and the readoption of Title 43, Part 1, Chapter 30, Aviation, and Chapter 31, Public Transportation.

This review and readoption has been conducted in accordance with Government Code, §2001.039. The Texas Transportation Commission (commission) has reviewed these rules and determined that the reasons for adopting them continue to exist. The department received no comments on the proposed rule review, which was published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5351).

This concludes the review of Chapters 30 and 31.

Questions regarding this rule review may be submitted in writing to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483, or by phone at (512) 463-8630.

TRD-200805237
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 26, 2008

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure 1: 16 TAC Chapter 8--Preamble

	Cost per Employee for			
At $16.30/hour, for a system on which there are	Sole Proprietorship (1 employee)	Micro-Business (5 employees)	Small Business (50 employees)	Large Business (1,000 employees)
No leak repairs	$0	$0	$0	$0
Ten leaks (additional 10 hours recording/reporting)	$ 163.00	$ 32.60	$ 3.26	$ 0.16
200 leaks (additional 200 hours recording/reporting)	$ 3,260.00	$ 652.00	$ 65.20	$ 3.26
3,000 leaks (additional 3,000 hours recording/reporting)	$48,900.00	$9,780.00	$978.00	$48.90

Figure 2: 16 TAC Chapter 8--Preamble

	Cost per employee for a system with existing maintenance programs			
System size	Sole Proprietorship (1 employee)	Micro-Business (5 employees)	Small Business (50 employees)	Large Business (1,000 employees)
<5 miles	$12,480.00	$2,496.00	$249.60	$12.48
Up to 100 miles	$24,960.00	$4,992.00	$499.20	$24.96
> 100 miles	$49,920.00	$9,984.00	$998.40	$49.92

	Cost per employee for a system without existing maintenance programs			
System size	Sole Proprietorship (1 employee)	Micro-Business (5 employees)	Small Business (50 employees)	Large Business (1,000 employees)
<5 miles	$22,080.00	$ 4,416.00	$ 441.60	$22.08
Up to 100 miles	$34,560.00	$ 6,912.00	$ 691.20	$34.56
> 100 miles	$59,520.00	$11,904.00	$1,190.40	$59.52

Figure 1: 16 TAC §8.101(b)(2)

GAS TRANSMISSION [~~AND GATHERING~~] LINES				
Size	**Pressure**	**Class 2, 3, 4**	**Class 1**	**Offshore**
Less than or equal to 8 inches	Less than 100 psig	n/a	n/a	Intervals prescribed by operator
	Greater than 100 psig and less than 20% SMYS	10 year intervals	n/a	Intervals prescribed by operator
	Greater than 20% SMYS	5 year intervals	n/a	Intervals prescribed by operator
Greater than 8 inches	Less than 100 psig	n/a	n/a	Intervals prescribed by operator
	Greater than 100 psig and less than 20% SMYS	5 year intervals	n/a	Intervals prescribed by operator
	Greater than 20% SMYS	5 year intervals	10 year intervals	Intervals prescribed by operator

Figure: 16 TAC §8.135(d)

Table 1. Typical Penalties.

Rule	Guideline Penalty Amount
16 TAC §3.70-Pipeline Permits Required	$1,000
16 TAC §8.1-General Applicability and Standards	$5,000
16 TAC §8.51-Organization Report	$1,000
16 TAC §8.101-Pipeline Integrity Assessment and Management Plans	$5,000
16 TAC §8.105-Records	$5,000
16 TAC §8.110-Operations and Maintenance Procedures	$5,000
16 TAC §8.115-Construction Commencement Report	$5,000
16 TAC §8.201-Pipeline Safety Program Fees	10% of amt. due
16 TAC §8.203-Supplemental Regulations	$5,000
16 TAC §8.205-Written Procedure for Handling Natural Gas Leak Complaints	$1,000
16 TAC §8.210-Reports	$5,000
16 TAC §8.215-Odorization of Gas	$5,000
16 TAC §8.220-Master Metered Systems	$5,000
16 TAC §8.225-Plastic Pipe Requirements	$5,000
16 TAC §8.230-School Piping Testing	$1,000
16 TAC §8.235-Natural Gas Pipelines Public Education and Liaison	$5,000
16 TAC §8.240-Discontinuance of Service	$10,000
16 TAC §8.301-Records and Reporting	$5,000
16 TAC §8.305-Corrosion Control	$2,500
16 TAC §8.310-Hazardous Liquids and Carbon Dioxide Public Education and Liaison	$5,000
16 TAC §8.315-Hazardous Liquids and Carbon Dioxide Pipeline Located within 1,000 Feet of Public School	$2,500
49 CFR 192.613-Continuing surveillance	$5,000
49 CFR 192.619-Maximum allowable operating pressure	$5,000
49 CFR 192.625-Odorization of gas	$5,000
49 CFR 192 Subpart N-Qualification of Pipeline Personnel	$2,500
49 CFR 192, Subpart O-Pipeline Integrity Management	$5,000
49 CFR Part 192-Transportation of Natural and Other Gas by Pipeline	$1,000
49 CFR Part 193-Liquefied Natural Gas Facilities: Federal Safety Standards	$1,000
49 CFR Part 195-Transportation of Hazardous Liquids by Pipeline	$1,000
49 CFR Part 195.401-General Requirements	$5,000
49 CFR Part 195.406-Maximum Operating Pressure	$5,000
49 CFR Part 195.440-Public Awareness	$2,500
49 CFR Part 195.452-Integrity Management	$5,000
49 CFR Part 195 Subpart G-Qualification of Pipeline Personnel	$2,500
49 CFR Part 199-Drug and Alcohol Testing	$ 500

Figure: 16 TAC §8.135(e)

Table 2. Penalty Enhancements.

For violations that involve	Threatened or actual pollution	Threatened or actual safety hazard	Severity of violation or culpability of person charged
Bay, estuary, or marine habitat	$5,000 to $25,000		
Impact to a residential or public area		$1,000 to $15,000	
Hazardous material release		$2,000 to $25,000	
Reportable incident or accident		$5,000 to $25,000	
Exceeding pressure control limits		$5,000 to $20,000	
Affected area exceeds 100 square feet			$10 per square foot
Time out of compliance			$100 to $2,000 for each month
Reckless conduct of person charged			up to double the total penalty
Intentional conduct of person charged			up to triple the total penalty

Figure 1: 16 TAC §8.135(f)

Table 3. Penalty enhancements based on number of prior violations within seven years.

Number of violations in the seven years prior to action	Enhancement amount
One	$1,000
Two	$2,000
Three	$3,000
Four	$4,000
Five or more	$5,000

Figure 2: 16 TAC §8.135(f)

Table 4. Penalty enhancements based on total amount of prior penalties within seven years.

Total administrative penalties assessed in the seven years prior to action	Enhancement amount
Less than $10,000	$1,000
Between $10,000 and $25,000	$2,500
Between $25,000 and $50,000	$5,000
Between $50,000 and $100,000	$10,000
Over $100,000	10% of total amount

Figure: 16 TAC §8.135(i)

Table 5. Penalty calculation worksheet.

Typical penalties from Table 1		
1. 16 TAC §3.70-Pipeline Permits Required	$1,000	$
2. 16 TAC §8.1-General Applicability and Standards	$5,000	$
3. 16 TAC §8.51-Organization Report	$1,000	$
4. 16 TAC §8.101-Pipeline Integrity Assessment and Management Plans	$5,000	$
5. 16 TAC §8.105-Records	$5,000	$
6. 16 TAC §8.110-Operations and Maintenance Procedures	$5,000	$
7. 16 TAC §8.115-Construction Commencement Report	$5,000	$
8. 16 TAC §8.201-Pipeline Safety Program Fees	10% of amt. due	$
9. 16 TAC §8.203-Supplemental Regulations	$5,000	$
10. 16 TAC §8.205-Written Procedure for Handling Natural Gas Leak Complaints	$1,000	$
11. 16 TAC §8.210-Reports	$5,000	$
12. 16 TAC §8.215-Odorization of Gas	$5,000	$
13. 16 TAC §8.220-Master Metered Systems	$5,000	$
14. 16 TAC §8.225-Plastic Pipe Requirements	$5,000	$
15. 16 TAC §8.230-School Piping Testing	$1,000	$
16. 16 TAC §8.235-Natural Gas Pipelines Public Education and Liaison	$5,000	$
17. 16 TAC §8.240-Discontinuance of Service	$10,000	$
18. 16 TAC §8.301-Records and Reporting	$5,000	$
19. 16 TAC §8.305-Corrosion Control	$2,500	$
20. 16 TAC §8.310-Hazardous Liquids and Carbon Dioxide Public Education and Liaison	$5,000	$
21. 16 TAC §8.315-Hazardous Liquids and Carbon Dioxide Pipelines Located within 1,000 Feet of Public School	$2,500	$
22. 49 CFR 192.613-Continuing surveillance	$5,000	$
23. 49 CFR 192.619-Maximum allowable operating pressure	$5,000	$
24. 49 CFR 192.625-Odorization of gas	$5,000	$
25. 49 CFR 192 Subpart N-Qualification of Pipeline Personnel	$2,500	$
26. 49 CFR Part 192, Subpart O-Pipeline Integrity Management	$5,000	$
27. 49 CFR Part 192-Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards	$1,000	$
28. 49 CFR Part 193-Liquefied Natural Gas Facilities	$1,000	$
29. 49 CFR Part 195-Transportation of Hazardous Liquids by Pipeline	$1,000	$
30. 49 CFR Part 195.401-General Requirements	$5,000	$
31. 49 CFR Part 195.406-Maximum Operating Pressure	$5,000	$
32. 49 CFR Part 195.440-Public Awareness	$2,500	$
33. 49 CFR Part 195.452-Integrity Management	$5,000	$
34. 49 CFR Part 195 Subpart G-Qualification of Pipeline Personnel	$2,500	$
35. 49 CFR Part 199-Drug and Alcohol Testing	$ 500	$
36. Subtotal of typical penalty amounts from Table 1 (lines 1-35, inclusive)		$
37. Reduction for settlement before hearing: up to 50% of line 36 amt.	_____ %	$
38. Subtotal: amount shown on line 24 less applicable settlement reduction (line 37)		$
Penalty enhancement amounts for threatened or actual pollution or safety hazard from Table 2		
39. Bay, estuary, or marine habitat	$5,000-$25,000	$
40. Impact to a residential or public area	$1,000-$15,000	$

41. Hazardous material release	$2,000-$25,000	$
42. Reportable incident or accident	$5,000-$25,000	$
43. Exceeding pressure control limits	$5,000-$20,000	$
Penalty enhancements for severity of violation from Table 2		
44. Affected area exceeds 100 square feet	$10 / square foot	$
45. Time out of compliance	$100-$2,000 / mo.	$
46. Subtotal: amount on line 38 plus all amounts on lines 39 through 45, inclusive		$
Penalty enhancements for culpability of person charged from Table 2		
47. Reckless conduct of person charged	double line 46 amt.	$
48. Intentional conduct of person charged	triple line 46 amt.	$
Penalty enhancements for number of prior violations within past seven years from Table 3		
49. One	$1,000	$
50. Two	$2,000	$
51. Three	$3,000	$
52. Four	$4,000	$
53. Five or more	$5,000	$
Penalty enhancements for amount of penalties within past seven years from Table 4		
54. Less than $10,000	$1,000	$
55. Between $10,000 and $25,000	$2,500	$
56. Between $25, 000 and $50,000	$5,000	$
57. Between $50,000 and $100,00	$10,000	$
58. Over $100,000	10% of total amt.	$
59. Subtotal: line 46 plus amounts on lines 47 and/or 48 plus the amount shown on any one line from 49 through 58, inclusive		$
60. Reduction for demonstrated good faith of person charged		$
TOTAL PENALTY AMOUNT: amount on line 59 less any amount shown on line 60		$

Figure: 16 TAC §8.210(e)(7)

PS-95 Semi-Annual Leak Report
Electronic Filing Requirements

The Railroad Commission of Texas (RRC or Commission) has implemented an online system for the filing of Pipeline Integrity reports. The web-based system is a part of the RRC Online system. This document describes Electronic Document Interchange (EDI) filing procedures for the PS-95 Leak Report that is a part of the Pipeline Integrity application.

EDI Filing Option:

a) Capability to file PS-95 Leak Reports via EDI.

b) The new system provides a delimited format allowing filers to easily file via EDI. Anyone using spreadsheet software to compile PS-95 data will be able to export the file to a right curly bracket (}) delimited format for EDI submission.

c) Elimination of the Commission's requirement to submit a test file. The Pipeline Integrity application will validate the format of each file submitted. A file not meeting the formatting requirements will be rejected. The filer will be required to correct the formatting error and resubmit the file. Since this check will be performed each time a file is submitted, the necessity to submit and receive a certification of formatting is redundant and therefore eliminated. However, the Commission will provide EDI filers with the capability to test a file prior to submitting to validate their EDI file format.

d) For specific records not meeting the filing requirements, the filer will receive error/approval feedback on the screen in the form of a message. A file may be resubmitted once all errors are corrected.

Security:

An organization (i.e., a Form P-5 operator) must file a Security Administrator Designation (SAD) Form with the Commission as a requirement for filing online and/or EDI. An account is created for the person designated on the SAD Form as the Security Administrator for the organization. This Security Administrator, in turn, can assign "Filing Rights" to employees of the organization authorizing them to file RRC forms online.

Organizations who have existing SAD forms do not need to re-file. The existing Security Administrators will be able to assign Pipeline Integrity "Filings Rights" to the users within the RRC Online Application.

EDI file and format requirements:

1) Permission to file electronically must be obtained from the Commission via a SAD (Security Administrator Designation) Form. Contact the P-5 department for more information. Information may also be found at http://www.rrc.state.tx.us/formpr/index.html
2) The file will have a delimited format. Only the following delimiter is allowed: a right curly bracket } (rcb)..
3) Numeric columns must not contain any commas—e.g., use 1000000 for one million, not 1,000,000. Nor should columns contain currency formatting like "$" or "USD".
4) Data entry is case sensitive.

Record Layouts:

Identifying Record

Each file submitted to the RRC for EDI processing must have an Identifying Record as the first record in the file. The processing of this record includes the validation that the User ID is authorized to file electronically. An operator may obtain authorization by submitting the Security Administrator Designation form (SAD) to the Commission's P-5 department.

Order	Req-uired	Max Length (in char-acters)	Data Item	Data Type	Description
1	Y	1	Record Type	Integer	Type of record for this identifying record must be 1
2	Y	4	Report Type	Alpha-numeric	Must be PS95.
3	Y	10	User ID	Alpha-numeric	User ID assigned by the RRC to the filer. User ID must match User ID of person logged in
4	Y	32	User Name	Alpha- numeric	Name of the User submitting the file
5	Y	32	User E-mail Address	Character	Email address for the User. Will be used to contact the User and should be valid.
6	Y	6	Operator Number	Integer	Operator Number is the 6 digit number assigned to P-5 Operators by the RRC.
7	Y	4	Report Year	Integer	Reporting year currently being accepted. Format is YYYY.
8	Y	1	Report Period	Integer	1 = 1st half of year, January – June 2 = 2nd half of year, July – December
9	Y	4	Record Count	Integer	Number of records in this filing.

PS-95 Unrepaired Leak Summary Record

Data included in this record type will replace any previously submitted data.

Order	Req.	Max Length	Data Item	Data Type	Description
1	Y	1	Record Type	Integer	Type of Record for Detail Record must be 2.
2	Y	6	Total Grade 1 Unrepaired Leaks for filing period	Integer	Number of unrepaired leaks considered an existing or probable hazard to person or property requiring prompt action. See Leak Classification Lookup Table on page 8 for complete Grade 1 definition.
3	Y	6	Total Grade 2 Unrepaired Leaks for filing period	Integer	Number of unrepaired leaks considered non-hazardous but a probable future hazard. See Leak Classification Lookup Table on page 8 for complete Grade 2 definition.
4	Y	6	Total Grade 3 Unrepaired Leaks for filing period	Integer	Number of unrepaired leaks considered non-hazardous and expected to remain non-hazardous. See Leak Classification Lookup Table on page 8 for complete Grade 3 definition.

PS-95 Leak Report Detail

* Denotes Required in some circumstances. See Description for specifics.

Order	Req.	Max Length	Data Item	Data Type	Description
1	Y	1	Record Type	Integer	Type of Record for Detail Record must be 3
2	Y	6	Pipeline System ID	Integer	System ID is the 6-digit number assigned by the RRC.
3	Y	20	Operator's Leak ID	Alpha- numeric	An Operator-generated number for the leak incident. Must be unique to the incident during that filing period for the Operator. All characters are allowed.
4	Y	8	Date Leak Reported	Integer	Date that the leak was reported, not always the date it occurred including two digit month and day, and 4-digit year. Must be in format (YYYYMMDD). If the specific day is not known, use the first of the month. Date must be prior to or within the current filing period. It may not be a future date.
5	Y	40	Street Address 1	Alpha-numeric	Address where the leak occurred. Address may read "2500 Block of Main Street" if the exact address is not known. **Must be at least 3 characters in length**
6	N	40	Street Address 2	Alpha-numeric	Second Address Line where the leak occurred.
7	Y	40	City	Alpha	City (or nearest city) where the leak occurred. **Must be at least 3 characters in length.**
8	N	5	Zip Code	Integer	5-digit zip code where the leak occurred. If entered, should correspond with the City indicated above.

Order	Req.	Max Length	Data Item	Data Type	Description
9	Y	3	County	Integer	County where the leak occurred. Select an FIPS County Code from County Code Lookup Table beginning on page 13.
10	Y	1	Leak Located	Integer	Valid values are 1 (Above Ground Piping) and 2 (Below Ground Piping). The soil/air interface is considered above ground.
11	Y	2	Leak Located On	Integer	Further pinpoints the location of the leak along the pipeline. Select a value from Located On Lookup Table on page 8.
12	N	7	Material Type	String	Compression Coupling Material Type - Either 'Steel' or 'Plastic'. Required if Leak Located On value equals 12.
13	N	8	Compression Coupling Date	Integer	Date compression coupling installed. Required if Leak Located On value equals 12. Must be in format (YYYYMMDD).
14	Y	1	Facility Type	Integer	Indicates the type of facility affected. Select a code from Facility Type Lookup Table on page 8.
15	Y	4	Pipe Size	Decimal	Decimal representation of IPS pipe size from ½ inch to 12 inches. For example, ½ inch would be .5 or 0.5 or 0.50, 3 ½ inch would be 3.5 or 3.50 and 11 inch would be 11 or 11.0 or 11.00.
16	Y	2	Pipe Type	Integer	Material type where the leak is located. Select a code from Pipe Type Lookup Table on page 9.
17	*	3	Pipe Manufacturer	Alpha- numeric	**If the Pipe Type Code is 8, 9 or 11**, provide a Manufacturer. Select a code from Pipe Manufacturer Lookup Table on page 9.
18	*	3	Pipe ASTM Material Code	Alpha- numeric	**If the Pipe Type is 8, 9 or 11**, provide the ASTM Material Code. See ASTM Code Lookup Table on page 10.
19	Y	1	Leak Classification	Integer	The leak classification is based on the operating and maintenance procedures. Select a code from Leak Classification Lookup Table on page 8.

Order	Req.	Max Length	Data Item	Data Type	Description
20	*	2	Type of Leaking Joint	Integer	The type of joint that leaked. **Required if Located On code is 5 (Joint).** Select a code from Joint Type Lookup Table on page 10.
21	*	2	Type of Leaking Fitting	Integer	The type of fitting that leaked. **Required if Located On code is 4 (Fitting).** Select a code from Fitting Type Lookup Table on page 11.
22	*	20	Coupling Model	Alpha	The model of the coupling that failed. **Required if Located On code is 12.**
23	*	20	Coupling Manufacturer	Alpha	The manufacturer of the coupling that failed. **Required if Located On code is 12.**
24	Y	2	Leak Cause	Integer	The root cause of the failure. Select a code from Leak Cause Lookup Table on page 12.
25	*	250	Other Leak Cause	Alpha- numeric	Further defines an Other Leak Cause. **Required if Other Leak Cause code 81** was entered for Leak Cause. **Must be at least 3 characters in length.**
26	Y	2	Leak Repair Method	Integer	Type of repair that was made. Select a code from Leak Repair Method Lookup Table on page 13.
27	Y	8	Repair Date	Integer	Date the repair was made. The date must be during the reporting period, cannot be a future date, cannot be before the date the leak was reported, and must be formatted YYYYMMDD.

Lookup Tables

Leak Classification Lookup Table

LEAK CLASSIFICATION CODE	DESCRIPTION
1	Grade 1 – A Grade 1 leak is an existing or probable hazard to persons or property and requires the operator to take action immediately to eliminate the hazard and make repairs.
2	Grade 2 – A Grade 2 leak is non-hazardous at the time of detection, but requires the operator to schedule repair based on probable future hazard. It can be scheduled for repair on a normal routine basis with periodic re-inspection as necessary.
3	Grade 3 – A Grade 3 leak is non-hazardous at the time of detection and can be reasonably expected to remain non-hazardous.

Located On Lookup Table

LOCATED ON CODE	DESCRIPTION
1	Valve
2	Body of Pipe
3	Stopcock
4	Fitting
5	Joint
6	Gauge Line
7	Riser
8	Regulator
9	Meter
10	Drip
11	Tap
12	Compression Coupling

Facility Type Lookup

FACILITY TYPE CODE	DESCRIPTION
1	Main
2	Service
3	Transmission

Pipe Type Lookup Table

PIPE TYPE CODE	DESCRIPTION
1	Bare Steel
2	Coated Steel
3	Ductile Iron
4	Cast Iron
5	Galvanized
6	Copper
7	Brass
8	High Density Polyethylene
9	Medium Density Polyethylene
10	Aldyl Polyethylene
11	Poly-Vinyl-Chloride

Pipe Manufacturer Lookup Table (High Density PE, Medium Density PE, or PVC)

CODE	MANUFACTURER
PP1	PolyPipe
PP2	PolyPipe, Inc.
PP3	CSR PolyPipe
RK1	Rinker
PF1	Performance Pipe
PX1	Plexco
DC1	Driscopipe
QU1	Quail
UP1	Uponorr
NP1	Nipak
OTH	Other Manufacturer, not listed, or unknown

ASTM Code Lookup Table (HDPE, MDPE, or PVC) (High Density PE, Medium Density PE, or PVC)

MATERIAL CODE	DESCRIPTION
PA1	Polyamide PA 32312
PB1	Polybutylene PB 2110
PE1	Polyethylene PE 2306
PE2	Polyethylene PE 2406
PE3	Polyethylene PE 3406
PE4	Polyethylene PE 3408
PV1	Polyvinyl Chloride PVC 1120
PV2	Polyvinyl Chloride PVC 1220
PV3	Polyvinyl Chloride PVC 2110
PV4	Polyvinyl Chloride PVC 2116
ABS	Acrylonitrile Butadiene Styrene ABS 1210
CA1	Cellulose Acetate Butyrate CAB MH08
CA2	Cellulose Acetate Butyrate CAB S004
RTR	Reinforced Epoxy Resin RTRP
OTH	Other Material Designation

Joint Type Lookup Table

JOINT TYPE CODE	DESCRIPTION
1	Factory Butt Weld (Steel)
2	Factory Fillet Weld (Steel)
3	Field Butt Weld (Steel)
4	Field Fillet Weld (Steel)
5	Threaded
6	Mechanical Joint
7	Bell & Spigot
8	Flange
9	Butt Fusion (Plastic)
10	Socket Fusion (Plastic)
11	Saddle Fusion (Plastic)
12	Electrofusion (Plastic)
13	Sidewall Fusion (Plastic)
14	Not Applicable
15	Other

Fitting Type Lookup Table

FITTING TYPE CODE	DESCRIPTION
1	Mechanical Service Tee
2	Heat Fusion Service Tee
3	Electrofusion Service Tee
4	Welded Service Tee
5	Saddle Fitting
6	Service Tee Cap
7	Anodeless Meter Riser
8	Threadolets/Weldolets/Sockolets
9	Plugs/Caps
10	Elbow
11	Nipple
12	Tee
13	Diaphragm
14	Other Meter Riser
17	Transition Fitting
18	Split Sleeve
19	Leak Clamp
20	Bell Joint Clamp
21	Meter Swivel
22	Union
23	Insulator
24	Other

Leak Cause Lookup Table

LEAK CAUSE GROUP	LEAK CAUSE CODE	LEAK CAUSE DESCRIPTION
Corrosion Group		
	11	Corrosion
Excavation Group		
	21	Operator Personnel/Contractors Excavating
	22	Other Third Party Excavators
	23	Locator
	24	Vehicle (Auto/Truck/etc.)
Natural Forces Group		
	31	Lightning
	32	Washout
	33	Ground Movement
	34	Ice
	35	Static Electricity
Other Outside Forces Group		
	41	Vandalism
	42	Fire/Explosion First
	43	Excessive Strain
Materials & Welds Group		
	51	Dent
	52	Gouge
	53	Factory Defect
	54	Wrinkle Bend
	55	Weld (Steel)
	56	Fusion Defect (Plastic)
Equipment Group		
	61	Equipment Malfunction
	62	Gasket/O-Ring
	63	Packing
Operations Group		
	71	Inadequate/Failure to Follow Procedures
	72	Stripped Threads
	73	Backfill
Other Group		
	81	Other
	82	Not Excavated

Leak Repair Method Lookup Table

REPAIR METHOD CODE	DESCRIPTION
1	Clamp Installed
2	Split Sleeve
3	Encapsulation
4	Component Replaced
5	Abandoned (Not Replaced)
6	Pipe Replaced
7	Greasing
8	Doped/Caulked
9	Tighten
10	Sealing Bell & Spigot Joint
11	Insertion

County Code Lookup Table

FIPS CODE	COUNTY NAME
001	ANDERSON
003	ANDREWS
005	ANGELINA
007	ARANSAS
009	ARCHER
011	ARMSTRONG
013	ATASCOSA
015	AUSTIN
017	BAILEY
019	BANDERA
021	BASTROP
023	BAYLOR
025	BEE
027	BELL
029	BEXAR

FIPS CODE	COUNTY NAME
031	BLANCO
033	BORDEN
035	BOSQUE
037	BOWIE
039	BRAZORIA
041	BRAZOS
043	BREWSTER
045	BRISCOE
047	BROOKS
049	BROWN
051	BURLESON
053	BURNET
055	CALDWELL
057	CALHOUN
059	CALLAHAN
061	CAMERON
063	CAMP
065	CARSON
067	CASS
069	CASTRO
071	CHAMBERS
073	CHEROKEE
075	CHILDRESS
077	CLAY
079	COCHRAN
081	COKE
083	COLEMAN
085	COLLIN
087	COLLINGSWORTH
089	COLORADO

FIPS CODE	COUNTY NAME
091	COMAL
093	COMANCHE
095	CONCHO
097	COOKE
099	CORYELL
101	COTTLE
103	CRANE
105	CROCKETT
107	CROSBY
109	CULBERSON
111	DALLAM
113	DALLAS
115	DAWSON
117	DEAF SMITH
119	DELTA
121	DENTON
123	DEWITT
125	DICKENS
127	DIMMIT
129	DONLEY
131	DUVAL
133	EASTLAND
135	ECTOR
137	EDWARDS
141	EL PASO
139	ELLIS
143	ERATH
145	FALLS
147	FANNIN
149	FAYETTE

FIPS CODE	COUNTY NAME
151	FISHER
153	FLOYD
155	FOARD
157	FORT BEND
159	FRANKLIN
161	FREESTONE
163	FRIO
165	GAINES
167	GALVESTON
169	GARZA
171	GILLESPIE
173	GLASSCOCK
175	GOLIAD
177	GONZALES
179	GRAY
181	GRAYSON
183	GREGG
185	GRIMES
187	GUADALUPE
189	HALE
191	HALL
193	HAMILTON
195	HANSFORD
197	HARDEMAN
199	HARDIN
201	HARRIS
203	HARRISON
205	HARTLEY
207	HASKELL
209	HAYS

FIPS CODE	COUNTY NAME
211	HEMPHILL
213	HENDERSON
215	HIDALGO
217	HILL
219	HOCKLEY
221	HOOD
223	HOPKINS
225	HOUSTON
227	HOWARD
229	HUDSPETH
231	HUNT
233	HUTCHINSON
235	IRION
237	JACK
239	JACKSON
241	JASPER
243	JEFF DAVIS
245	JEFFERSON
247	JIM HOGG
249	JIM WELLS
251	JOHNSON
253	JONES
255	KARNES
257	KAUFMAN
259	KENDALL
261	KENEDY
263	KENT
265	KERR
267	KIMBLE
269	KING

FIPS CODE	COUNTY NAME
271	KINNEY
273	KLEBERG
275	KNOX
283	LA SALLE
277	LAMAR
279	LAMB
281	LAMPASAS
285	LAVACA
287	LEE
289	LEON
291	LIBERTY
293	LIMESTONE
295	LIPSCOMB
297	LIVE OAK
299	LLANO
301	LOVING
303	LUBBOCK
305	LYNN
313	MADISON
315	MARION
317	MARTIN
319	MASON
321	MATAGORDA
323	MAVERICK
307	MCCULLOCH
309	MCLENNAN
311	MCMULLEN
325	MEDINA
327	MENARD
329	MIDLAND

FIPS CODE	COUNTY NAME
331	MILAM
333	MILLS
335	MITCHELL
337	MONTAGUE
339	MONTGOMERY
341	MOORE
343	MORRIS
345	MOTLEY
347	NACOGDOCHES
349	NAVARRO
351	NEWTON
353	NOLAN
355	NUECES
357	OCHILTREE
359	OLDHAM
361	ORANGE
363	PALO PINTO
365	PANOLA
367	PARKER
369	PARMER
371	PECOS
373	POLK
375	POTTER
377	PRESIDIO
379	RAINS
381	RANDALL
383	REAGAN
385	REAL
387	RED RIVER
389	REEVES

FIPS CODE	COUNTY NAME
391	REFUGIO
393	ROBERTS
395	ROBERTSON
397	ROCKWALL
399	RUNNELS
401	RUSK
403	SABINE
405	SAN AUGUSTINE
407	SAN JACINTO
409	SAN PATRICIO
411	SAN SABA
413	SCHLEICHER
415	SCURRY
417	SHACKELFORD
419	SHELBY
421	SHERMAN
423	SMITH
425	SOMERVELL
427	STARR
429	STEPHENS
431	STERLING
433	STONEWALL
435	SUTTON
437	SWISHER
439	TARRANT
441	TAYLOR
443	TERRELL
445	TERRY
447	THROCKMORTON
449	TITUS

FIPS CODE	COUNTY NAME
451	TOM GREEN
453	TRAVIS
455	TRINITY
457	TYLER
459	UPSHUR
461	UPTON
463	UVALDE
465	VAL VERDE
467	VAN ZANDT
469	VICTORIA
471	WALKER
473	WALLER
475	WARD
477	WASHINGTON
479	WEBB
481	WHARTON
483	WHEELER
485	WICHITA
487	WILBARGER
489	WILLACY
491	WILLIAMSON
493	WILSON
495	WINKLER
497	WISE
499	WOOD
501	YOAKUM
503	YOUNG
505	ZAPATA
507	ZAVALA

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Camino Real Regional Mobility Authority

Notice of Availability of Request for Qualifications for General Engineering Consulting Services

The Camino Real Regional Mobility Authority ("CRRMA"), a political subdivision, is soliciting statements of interest and qualifications from experienced professional civil engineering firms interested in providing general engineering consulting ("GEC") services. The selected firm shall operate in complete coordination with the CRRMA and its staff and consultants with respect to current and future projects, with responsibilities to include managing the development of transportation and turnpike projects within the region served by the CRRMA and providing advisory services related to the operation and maintenance of such transportation and turnpike projects.

A request for qualifications ("RFQ") packet was made available on September 26, 2008. Electronic copies may be obtained from the CRRMA webpage (http://www.elpasotexas.gov/muni_clerk/detail.asp?id=84). Copies are also available by contacting Raymond L. Telles at (915) 541-4986 or tellesrl@crrma.org. Periodic updates, addenda, and clarifications may be posted on the CRRMA webpage as well. Interested parties are responsible for monitoring the webpage accordingly. Final proposals must be received by the CRRMA, c/o Raymond L. Telles, Executive Director, 2 Civic Center Plaza, 9th Floor, El Paso, Texas 79901 by 3:00 p.m. (MST) on October 24, 2008, to be eligible for consideration.

Each firm will be evaluated based on the criteria and process set forth in the RFQ. The final selection of the GEC firm, if any, will be made by the CRRMA Board of Directors.

Questions concerning this RFQ must be directed in writing to the CRRMA, c/o Raymond L. Telles, Executive Director, 2 Civic Center Plaza, 9th Floor, El Paso, Texas 79901, or via e-mail to tellesrl@crrma.org. All questions must be received by 3:00 p.m. (MST) on October 10, 2008.

TRD-200805280
Raymond L. Telles
Executive Director
Camino Real Regional Mobility Authority
Filed: October 1, 2008

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of September 19, 2008, through September 25, 2008. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on October 1, 2008. The public comment period for this project will close at 5:00 p.m. on October 31, 2008.

FEDERAL AGENCY ACTIONS:

Applicant: Port of Corpus Christi; Location: The project is located along the Tule Lake/Corpus Christi Ship Channel, in Corpus Christi, Nueces County, Texas. The site can be located on the U.S.G.S. quadrangle map entitled: Corpus Christi, Texas. Approximate NAD 83 UTM Coordinates: Zone 14; Easting: 652320; Northing: 3078090. Project Description: The applicant proposes to hydraulically dredge a 1,200-foot long section of the Corpus Christi Ship Channel around the old Tule Lake bridge land masses between USACE Sta. 1302+00 to Sta. 1314+00. The project would involve the removal of approximately 150,000 cubic yards of material. The dredged material would be placed in one of the Ports' authorized placement areas. CCC Project No.: 08-0242-F1. Type of Application: U.S.A.C.E. permit application #SWG-20083-00486 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200805264
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: September 30, 2008

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/06/08 - 10/12/08 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/06/08 - 10/12/08 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200805276
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 30, 2008

♦ ♦ ♦

Court of Criminal Appeals

Amendments to the Texas Rules of Appellate Procedure

Misc. Docket No. 08-103

ORDERED that:

1. Pursuant to Section 22.108 of the Texas Government Code, the Texas Rules of Appellate Procedure are amended as follows.

2. By Order dated June 30, 2008, in Misc. Docket No. 08-102, the Court of Criminal Appeals adopted amendments to Texas Rules of Appellate Procedure governing criminal cases. By Orders dated August 20, 2008 and August 25, 2008, in Misc. Docket Nos. 08-9115 and 08-9115a, the Supreme Court adopted amendments to Texas Rules of Appellate Procedure governing civil cases. Some of the amended rules in the Supreme Court's Orders apply to both civil and criminal cases. In this Order, the Court of Criminal Appeals approves those amended rules to the extent they apply to criminal cases. For convenience, all of the amended rules are attached to the Order.

3. The comments appended to these amended rules are intended to inform the construction and application of the rules.

4. The Clerk is directed to:

a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this Order to each member of the Legislature before December 1; and

d. submit a copy of this Order for publication in the *Texas Register.*

SIGNED AND ENTERED this _____ day of September, 2008.

_____

Sharon Keller, Presiding Judge

_____

Lawrence E. Meyers, Judge

_____

Tom Price, Judge

_____

Paul Womack, Judge

_____

Cheryl Johnson, Judge

_____

Michael Keasler, Judge

_____

Barbara Hervey, Judge

_____

Charles Holcomb, Judge

_____

Cathy Cochran, Judge

Rule 4. Time and Notice Provisions

4.5. No Notice of Judgment or Order of Appellate Court; Effect on Time to File Certain Documents

(a) *Additional Time to File Documents.* A party may move for additional time to file a motion for rehearing or en banc reconsideration in the court of appeals, a petition for review, or a petition for discretionary review, if the party did not--until after the time expired for filing the document--either receive notice of the judgment or order from the clerk or acquire actual knowledge of the rendition of the judgment or order.

* * *

(c) *Where to File.*

(1) A motion for additional time to file a motion for rehearing or en banc reconsideration in the court of appeals must be filed in and ruled on by the court of appeals in which the case is pending.

* * *

(d) *Order of the Court.* If the court finds that the motion for additional time was timely filed and the party did not--within the time for filing the motion for rehearing or en banc reconsideration, petition for review, or petition for discretionary review, as the case may be--receive the notice or have actual knowledge of the judgment or order, the court must grant the motion. The time for filing the document will begin to run on the date when the court grants the motion.

Comment to 2008 change: Subdivision 4.5 is changed, consistent with other changes in the rules, to specifically address a motion for en banc reconsideration and treat it as a motion for rehearing.

Rule 8. Bankruptcy in Civil Cases

8.1. Notice of Bankruptcy

Any party may file a notice that a party is in bankruptcy. The notice must contain:

(a) the bankrupt party's name;

(b) the court in which the bankruptcy proceeding is pending;

(c) the bankruptcy proceeding's style and case number; and

(d) the date when the bankruptcy petition was filed.

Comment to 2008 change: The requirement that the bankruptcy notice contain certain pages of the bankruptcy petition is eliminated, given that electronic filing is now prevalent in bankruptcy courts and bankruptcy petitions are available through the federal PACER system.

Rule 9. Papers Generally

9.3. Number of Copies

* * *

(b) *Supreme Court and Court of Criminal Appeals.* A party must file the original and 11 copies of any document addressed to either the Supreme Court or the Court of Criminal Appeals, except that in the Supreme Court, only an original and two copies must be filed of a motion for extension of time or a response to the motion, and in the Court of Criminal Appeals, only the original must be filed of a motion for extension of time or a response to the motion, or a pleading under Code of Criminal Procedure article 11.07.

9.8. Protection of Minor's Identity in Parental-Rights Termination Cases and Juvenile Court Cases

(a) *Alias Defined.* For purposes of this rule, an alias means one or more of a person's initials or a fictitious name, used to refer to the person.

(b) *Parental-Rights Termination Cases.* In an appeal or an original proceeding in an appellate court, arising out of a case in which the termination of parental rights was at issue:

(1) except for a docketing statement, in all papers submitted to the court, including all appendix items submitted with a brief, petition, or motion:

(A) a minor must be identified only by an alias unless the court orders otherwise;

(B) the court may order that a minor's parent or other family member be identified only by an alias if necessary to protect a minor's identity; and

(C) all documents must be redacted accordingly;

(2) the court must, in its opinion, use an alias to refer to a minor, and if necessary to protect the minor's identity, to the minor's parent or other family member.

(c) *Juvenile Court Cases.* In an appeal or an original proceeding in an appellate court, arising out of a case under Title 3 of the Family Code:

(1) except for a docketing statement, in all papers submitted to the court, including all appendix items submitted with a brief, petition, or motion:

(A) a minor must be identified only by an alias;

(B) a minor's parent or other family member must be identified only by an alias; and

(C) all documents must be redacted accordingly;

(2) the court must, in its opinion, use an alias to refer to a minor and to the minor's parent or other family member.

(d) *No Alteration of Appellate Record.* Nothing in this rule permits alteration of the original appellate record except as specifically authorized by court order.

Comment to 2008 change: Subdivision 9.3 is amended to reduce the number of copies of a motion for extension of time or response filed in the Supreme Court. Subdivision 9.8 is new. To protect the privacy of minors in suits affecting the parent-child relationship (SAPCR), including suits to terminate parental rights, Section 109.002(d) of the Family Code authorizes appellate courts, in their opinions, to identify parties only by fictitious names or by initials. Similarly, Section 56.01(j) of the Family Code prohibits identification of a minor or a minor's family in an appellate opinion related to juvenile court proceedings. But as appellate briefing becomes more widely available through electronic media sources, appellate courts' efforts to protect minors' privacy by disguising their identities in appellate opinions may be defeated if the same children are fully identified in briefs and other court papers available to the public. The rule provides protection from such disclosures. Any fictitious name should not be pejorative or suggest the person's true identity. The rule does not limit an appellate court's authority to disguise parties' identities in appropriate circumstances in other cases. Although appellate courts are authorized to enforce the rule's provisions requiring redaction, parties and amici curiae are responsible for ensuring that briefs and other papers submitted to the court fully comply with the rule.

Rule 10. Motions in the Appellate Courts

10.1. Contents of Motions; Response

(a) *Motion.* Unless these rules prescribe another form, a party must apply by motion for an order or other relief. The motion must:

* * *

(5) in civil cases, except for motions for rehearing and en banc reconsideration, contain or be accompanied by a certificate stating that the filing party conferred, or made a reasonable attempt to confer, with all other parties about the merits of the motion and whether those parties oppose the motion.

10.2. Evidence on Motions

A motion need not be verified unless it depends on the following types of facts, in which case the motion must be supported by affidavit or other satisfactory evidence. The types of facts requiring proof are those that are:

(a) not in the record;

(b) not within the court's knowledge in its official capacity; and

(c) not within the personal knowledge of the attorney signing the motion.

10.5. Particular Motions

* * *

(b) *Motions to Extend Time.*

* * *

(2) Contents of Motion to Extend Time to File Notice of Appeal. A motion to extend the time for filing a notice of appeal must:

(A) comply with (1)(A) and (C);

(B) identify the trial court;

(C) state the date of the trial court's judgment or appealable order; and

(D) state the case number and style of the case in the trial court.

(3) Contents of Motion to Extend Time to File Petition for Review or Petition for Discretionary Review. A motion to extend time to file a petition for review or petition for discretionary review must also specify:

(A) the court of appeals;

(B) the date of the court of appeals' judgment;

(C) the case number and style of the case in the court of appeals; and

(D) the date every motion for rehearing or en banc reconsideration was filed, and either the date and nature of the court of appeals' ruling on the motion, or that it remains pending.

Comment to 2008 change: It happens so infrequently that a nonmovant does not oppose a motion for rehearing or en banc reconsideration that such motions are excepted from the certificate-of-conference requirement in Subdivision 10.1(a)(5). Subdivision 10.2 is revised to clarify that facts supporting a motion need not be verified by the filer if supporting evidence is in the record, the facts are known to the court, or the filer has personal knowledge of them. Subdivision 10.5(b)(3)(D) is added.

Rule 19. Plenary Power of the Courts of Appeals and Expiration of Term

19.1. Plenary Power of Courts of Appeals

A court of appeals' plenary power over its judgment expires:

(a) 60 days after judgment if no timely filed motion for rehearing or en banc reconsideration, or timely filed motion to extend time to file such a motion, is then pending; or

(b) 30 days after the court overrules all timely filed motions for rehearing or en banc reconsideration, and all timely filed motions to extend time to file such a motion.

Comment to 2008 change: Subdivision 19.1 is changed, consistent with other changes in the rules, to specifically address a motion for en banc reconsideration and treat it as a motion for rehearing.

Rule 20. When Party Is Indigent

20.1. Civil Cases

(a) *Establishing Indigence.*

(1) By Certificate. If the appellant proceeded in the trial court without advance payment of costs pursuant to a certificate under Texas Rule of Civil Procedure 145(c) confirming that the appellant was screened for eligibility to receive free legal services under income guidelines used by a program funded by Interest on Lawyers Trust Accounts or the Texas Access to Justice Foundation, an additional certificate may be filed in the appellate court confirming that the appellant was rescreened after rendition of the trial court's judgment and again found eligible under program guidelines. A party's affidavit of inability accompanied by the certificate may not be contested.

(2) By Affidavit. A party who cannot pay the costs in an appellate court may proceed without advance payment of costs if:

(A) the party files an affidavit of indigence in compliance with this rule;

(B) the claim of indigence is not contestable, is not contested, or, if contested, the contest is not sustained by written order; and

(C) the party timely files a notice of appeal.

(b) *Contents of Affidavit.* The affidavit of indigence must identify the party filing the affidavit and must state what amount of costs, if any, the party can pay. The affidavit must also contain complete information about:

* * *

(10) whether an attorney is providing free legal services to the party without a contingent fee;

(11) whether an attorney has agreed to pay or advance court costs; and

(12) if applicable, the party's lack of the skill and access to equipment necessary to prepare the appendix, as required by Rule 38.5(d).

(c) *When and Where Affidavit Filed.*

(1) Appeals. An appellant must file the affidavit of indigence in the trial court with or before the notice of appeal. The prior filing of an affidavit of indigence in the trial court pursuant to Texas Rule of Civil Procedure 145 does not meet the requirements of this rule, which requires a separate affidavit and proof of current indigence. An appellee who is required to pay part of the cost of preparation of the record under Rule 34.5(b)(3) or 34.6(c)(3) must file an affidavit of indigence in the trial court within 15 days after the date when the appellee becomes responsible for paying that cost.

* * *

(3) Extension of Time. The appellate court may extend the time to file an affidavit of indigence if, within 15 days after the deadline for filing the affidavit, the party files in the appellate court a motion complying with Rule 10.5(b). But the court may not dismiss the appeal or affirm the trial court's judgment on the ground that the appellant has failed to file an affidavit or a sufficient affidavit of indigence unless the court has first provided the appellant notice of the deficiency and a reasonable time to remedy it.

(d) *Duty of Clerk.*

(1) Trial Court Clerk. If the affidavit of indigence is filed with the trial court clerk under (c)(1), the clerk must promptly send a copy of the affidavit to the appropriate court reporter.

(2) Appellate Court Clerk. If the affidavit of indigence is filed with the appellate court clerk and if the filing party is requesting the preparation of a record, the appellate court clerk must:

(A) send a copy of the affidavit to the trial court clerk and the appropriate court reporter; and

(B) send to the trial court clerk, the court reporter, and all parties, a notice stating the deadline for filing a contest to the affidavit of indigence.

(e) *Contest to Affidavit.* The clerk, the court reporter, the court recorder, or any party may challenge an affidavit that is not accompanied by a TAJF certificate by filing--in the court in which the affidavit was filed--a contest to the affidavit. The contest must be filed on or before the date set by the clerk if the affidavit was filed in the appellate court, or within 10 days after the date when the affidavit was filed if the affidavit was filed in the trial court. The contest need not be sworn.

Comment to 2008 change: Subdivision 20.1(a) is added to provide, as in Texas Rule of Civil Procedure 145, that an affidavit of indigence accompanied by an IOLTA or other Texas Access to Justice Foundation certificate cannot be challenged. Subdivision 20.1(c)(1) is revised to clarify that an affidavit of indigence filed to proceed in the trial court without advance payment of costs is insufficient to establish indigence on appeal; a separate affidavit must be filed with or before the notice of appeal. Subdivision 20.1(c)(3) is revised to provide that an appellate court must give an appellant who fails to file a proper appellate indigence affidavit notice of the defect and an opportunity to cure it before dismissing the appeal or affirming the judgment on that basis. *See Higgins v. Randall County Sheriff's Office*, 193 S.W.3d 898 (Tex. 2006). The limiting phrase "under (c)(2)" in Subdivision 20.1(d)(2) is deleted to clarify that the appellate clerk's duty to forward copies of the affidavit to the trial court clerk and the court reporter, along with a notice setting a deadline to contest the affidavit, applies to affidavits on appeal erroneously filed in the appellate court, not only to affidavits in other appellate proceedings properly filed in the appellate court under subdivision 20.1(c)(2). Although Subdivision 3.1(g) defines "court reporter" to include court recorder, subdivision 20.1(e) is amended to make clear that a court recorder can contest an affidavit.

Rule 24. Suspension of Enforcement of Judgment Pending Appeal in Civil Cases

24.2. Amount of Bond, Deposit, or Security

* * *

(c) *Determination of Net Worth.*

(1) Judgment Debtor's Affidavit Required; Contents; Prima Facie Evidence. A judgment debtor who provides a bond, deposit, or security under (a)(1)(A) in an amount based on the debtor's net worth must simultaneously file with the trial court clerk an affidavit that states the debtor's net worth and states complete, detailed information concerning the debtor's assets and liabilities from which net worth can be

ascertained. An affidavit that meets these requirements is prima facie evidence of the debtor's net worth for the purpose of establishing the amount of the bond, deposit, or security required to suspend enforcement of the judgment. A trial court clerk must receive and file a net-worth affidavit tendered for filing by a judgment debtor.

(2) Contest; Discovery. A judgment creditor may file a contest to the debtor's claimed net worth. The contest need not be sworn. The creditor may conduct reasonable discovery concerning the judgment debtor's net worth.

(3) Hearing; Burden of Proof; Findings; Additional Security. The trial court must hear a judgment creditor's contest of the judgment debtor's claimed net worth promptly after any discovery has been completed. The judgment debtor has the burden of proving net worth. The trial court must issue an order that states the debtor's net worth and states with particularity the factual basis for that determination. If the trial court orders additional or other security to supersede the judgment, the enforcement of the judgment will be suspended for twenty days after the trial court's order. If the judgment debtor does not comply with the order within that period, the judgment may be enforced against the judgment debtor.

24.4. Appellate Review

(a) *Motions; Review.* A party may seek review of the trial court's ruling by motion filed in the court of appeals with jurisdiction or potential jurisdiction over the appeal from the judgment in the case. A party may seek review of the court of appeals' ruling on the motion by petition for writ of mandamus in the Supreme Court. The appellate court may review:

(1) the sufficiency or excessiveness of the amount of security, but when the judgment is for money, the appellate court must not modify the amount of security to exceed the limits imposed by Rule 24.2(a)(1);

(2) the sureties on any bond;

(3) the type of security;

(4) the determination whether to permit suspension of enforcement; and

(5) the trial court's exercise of discretion under Rule 24.3(a).

Comment to 2008 change: Subdivision 24.2(c) is amended to clarify the procedure in determining net worth. A debtor's affidavit of net worth must be detailed, but the clerk must file what is tendered without determining whether it complies with the rule. If the trial court orders that additional or other security be given, the debtor is afforded time to comply. Subdivision 24.4(a) is revised to clarify that a party seeking relief from a supersedeas ruling should file a motion in the court of appeals that has or presumably will have jurisdiction of the appeal. After the court of appeals has ruled, a party may seek review by filing a petition for writ of mandamus in the Supreme Court. *See In re Smith / In re Main Place Custom Homes, Inc.*, 192 S.W.3d 564, 568 (Tex. 2006) (per curiam).

Rule 25. Perfecting Appeal

25.2. Criminal Cases

* * *

(b) *Perfection of Appeal.* In a criminal case, appeal is perfected by timely filing a sufficient notice of appeal. In a death-penalty case it is unnecessary to file a notice of appeal, but, in every death-penalty case, the clerk of the trial court shall file a notice of conviction with the Court of Criminal Appeals within thirty days after the defendant is sentenced to death.

Rule 26. Time to Perfect Appeal

26.2. Criminal Cases

* * *

(b) *By the State.* The notice of appeal must be filed within 20 days after the day the trial court enters the order, ruling, or sentence to be appealed.

Rule 28. Accelerated and Agreed Interlocutory Appeals in Civil Cases

28.1. Accelerated Appeals

(a) *Types of Accelerated Appeals.* Appeals from interlocutory orders (when allowed as of right by statute), appeals in quo warranto proceedings, appeals required by statute to be accelerated or expedited, and appeals required by law to be filed or perfected within less than 30 days after the date of the order or judgment being appealed are accelerated appeals.

(b) *Perfection of Accelerated Appeal.* Unless otherwise provided by statute, an accelerated appeal is perfected by filing a notice of appeal in compliance with Rule 25.1 within the time allowed by Rule 26.1(b) or as extended by Rule 26.3. Filing a motion for new trial, any other post-trial motion, or a request for findings of fact will not extend the time to perfect an accelerated appeal.

(c) *Appeals of Interlocutory Orders.* The trial court need not file findings of fact and conclusions of law but may do so within 30 days after the order is signed.

(d) *Quo Warranto Appeals.* The trial court may grant a motion for new trial timely filed under Texas Rule of Civil Procedure 329b(a)-(b) until 50 days after the trial court's final judgment is signed. If not determined by signed written order within that period, the motion will be deemed overruled by operation of law on expiration of that period.

(e) *Record and Briefs.* In lieu of the clerk's record, the appellate court may hear an accelerated appeal on the original papers forwarded by the trial court or on sworn and uncontroverted copies of those papers. The appellate court may allow the case to be submitted without briefs. The deadlines and procedures for filing the record and briefs in an accelerated appeal are provided in Rules 35.1 and 38.6.

28.2. Agreed Interlocutory Appeals in Civil Cases

(a) *Perfecting Appeal.* An agreed appeal of an interlocutory order permitted by statute must be perfected as provided in Rule 25.1. The notice of appeal must be filed no later than the 20th day after the date the trial court signs a written order granting permission to appeal, unless the court of appeals extends the time for filing pursuant to Rule 26.3.

(b) *Other Requirements.* In addition to perfecting appeal, the appellant must file with the clerk of the appellate court a docketing statement as provided in Rule 32.1 and pay to the clerk of the appellate court all required fees authorized to be collected by the clerk.

(c) *Contents of Notice.* The notice of accelerated appeal must contain, in addition to the items required by Rule 25.1(d), the following:

(1) a list of the names of all parties to the trial court proceeding and the names, addresses, and telefax numbers of all trial and appellate counsel;

(2) a copy of the trial court's order granting permission to appeal;

(3) a copy of the trial court order appealed from;

(4) a statement that all parties to the trial court proceeding agreed to the trial court's order granting permission to appeal;

(5) a statement that all parties to the trial court proceeding agreed that the order granting permission to appeal involves a controlling question

of law as to which there is a substantial ground for difference of opinion;

(6) a brief statement of the issues or points presented; and

(7) a concise explanation of how an immediate appeal may materially advance the ultimate termination of the litigation.

(d) *Determination of Jurisdiction.* If the court of appeals determines that a notice of appeal filed under this rule does not demonstrate the court's jurisdiction, it may order the appellant to file an amended notice of appeal. On a party's motion or its own initiative, the court of appeals may also order the appellant or any other party to file briefing addressing whether the appeal meets the statutory requirements, and may direct the parties to file supporting evidence. If, after providing an opportunity to file an amended notice of appeal or briefing addressing potential jurisdictional defects, the court of appeals concludes that a jurisdictional defect exists, it may dismiss the appeal for want of jurisdiction at any stage of the appeal.

(e) *Record; Briefs.* The rules governing the filing of the appellate record and briefs in accelerated appeals apply. A party may address in its brief any issues related to the court of appeals' jurisdiction, including whether the appeal meets the statutory requirements.

(f) *No Automatic Stay of Proceedings in Trial Court.* An agreed appeal of an interlocutory order permitted by statute does not stay proceedings in the trial court except as agreed by the parties and ordered by the trial court or the court of appeals.

Comment to 2008 change: Rule 28 is rewritten. Subdivision 28.1 more clearly defines accelerated appeals and provides a uniform appellate timetable. But many statutes that provide for accelerated or expedited appeals also set appellate timetables, and statutory deadlines govern over deadlines provided in the rule. Subdivision 28.2 provides procedures for an agreed appeal of an interlocutory order permitted by statute. Such appeals are now permitted under Section 51.014(d) of the Civil Practice and Remedies Code. The requirements for perfecting appeal are generally set out in Rule 25.1, and as provided there, only the notice of appeal is jurisdictional.

Rule 29. Orders Pending Interlocutory Appeal in Civil Cases

29.5. Further Proceedings in Trial Court

While an appeal from an interlocutory order is pending, the trial court retains jurisdiction of the case and unless prohibited by statute may make further orders, including one dissolving the order complained of on appeal. If permitted by law, the trial court may proceed with a trial on the merits. But the court must not make an order that:

(a) is inconsistent with any appellate court temporary order; or

(b) interferes with or impairs the jurisdiction of the appellate court or effectiveness of any relief sought or that may be granted on appeal.

Comment to 2008 change: Rule 29.5 is amended to be consistent with Section 51.014(b) of the Civil Practice and Remedies Code, as amended in 2003, staying all proceedings in the trial court pending resolution of interlocutory appeals of class certification orders, denials of summary judgments based on assertions of immunity by governmental officers or employees, and orders granting or denying a governmental unit's plea to the jurisdiction.

Rule 38. Requisites of Briefs

38.1. Appellant's Brief

The appellant's brief must, under appropriate headings and in the order here indicated, contain the following:

(a) *Identity of Parties and Counsel.* The brief must give a complete list of all parties to the trial court's judgment or order appealed from, and the names and addresses of all trial and appellate counsel, except as otherwise provided in Rule 9.8.

* * *

(e) *Any Statement Regarding Oral Argument.* The brief may include a statement explaining why oral argument should or should not be permitted. Any such statement must not exceed one page and should address how the court's decisional process would, or would not, be aided by oral argument. As required by Rule 39.7, any party requesting oral argument must note that request on the front cover of the party's brief.

(f) *Issues Presented.* [no change to rule text]

(g) *Statement of Facts.* [no change to rule text]

(h) *Summary of the Argument.* [no change to rule text]

(I) *Argument.* [no change to rule text]

(j) *Prayer.* [no change to rule text]

(k) *Appendix in Civil Cases.* [no change to rule text]

38.4. Length of Briefs

An appellant's brief or appellee's brief must be no longer than 50 pages, exclusive of the pages containing the identity of parties and counsel, any statement regarding oral argument, the table of contents, the index of authorities, the statement of the case, the issues presented, the signature, the proof of service, and the appendix. A reply brief must be no longer than 25 pages, exclusive of the items stated above. But in a civil case, the aggregate number of pages of all briefs filed by a party must not exceed 90, exclusive of the items stated above. The court may, on motion, permit a longer brief.

Comment to 2008 change: A party may choose to include a statement in the brief regarding oral argument. The optional statement does not count toward the briefing page limit.

Rule 39. Oral Argument; Decision Without Argument

39.1. Right to Oral Argument

A party who has filed a brief and who has timely requested oral argument may argue the case to the court unless the court, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:

(a) the appeal is frivolous;

(b) the dispositive issue or issues have been authoritatively decided;

(c) the facts and legal arguments are adequately presented in the briefs and record; or

(d) the decisional process would not be significantly aided by oral argument.

39.8. Cases Advanced Without Oral Argument [deleted]

39.8. Clerk's Notice [former 39.9, renumbered, no change to rule text]

Comment to 2008 change: Subdivision 39.1 is amended to provide for oral argument unless the court determines it is unnecessary and to set out the reasons why argument may be unnecessary. The appellate court must evaluate these reasons in view of the traditional importance of oral argument. The court need not agree on, and generally should not announce, a specific reason or reasons for declining oral argument.

Rule 41. Panel and En Banc Decision

41.1. Decision by Panel

* * *

(b) *When Panel Cannot Agree on Judgment.* After argument, if for any reason a member of the panel cannot participate in deciding a case, the case may be decided by the two remaining justices. If they cannot agree on a judgment, the chief justice of the court of appeals must:

(1) designate another justice of the court to sit on the panel to consider the case;

(2) request the Chief Justice of the Supreme Court to temporarily assign an eligible justice or judge to sit on the panel to consider the case; or

(3) convene the court en banc to consider the case.

The reconstituted panel or the en banc court may order the case reargued.

(c) *When Court Cannot Agree on Judgment.* After argument, if for any reason a member of a court consisting of only three justices cannot participate in deciding a case, the case may be decided by the two remaining justices. If they cannot agree on a judgment, that fact must be certified to the Chief Justice of the Supreme Court. The Chief Justice may then temporarily assign an eligible justice or judge to sit with the court of appeals to consider the case. The reconstituted court may order the case reargued.

41.2. Decision by En Banc Court

* * *

(b) *When En Banc Court Cannot Agree on Judgment.* If a majority of an en banc court cannot agree on a judgment, that fact must be certified to the Chief Justice of the Supreme Court. The Chief Justice may then temporarily assign an eligible justice or judge to sit with the court of appeals to consider the case. The reconstituted court may order the case reargued.

41.3. Precedent in Transferred Cases

In cases transferred by the Supreme Court from one court of appeals to another, the court of appeals to which the case is transferred must decide the case in accordance with the precedent of the transferor court under principles of stare decisis if the transferee court's decision otherwise would have been inconsistent with the precedent of the transferor court. The court's opinion may state whether the outcome would have been different had the transferee court not been required to decide the case in accordance with the transferor court's precedent.

Comment to 2008 change: Subdivisions 41.1 and 41.2 are amended to acknowledge the full authority of the Chief Justice of the Supreme Court to temporarily assign a justice or judge to hear a matter pending in an appellate court. The statutory provisions governing the assignment of judges to appellate courts are located in Chapters 74 and 75 of the Government Code. Other minor changes are made for consistency. Subdivision 41.3 is added to require, in appellate cases transferred by the Supreme Court under Section 73.001 of the Government Code for docket equalization or other purposes, that the transferee court must generally resolve any conflict between the precedent of the transferor court and the precedent of the transferee court--or that of any other intermediate appellate court the transferee court otherwise would have followed--by following the precedent of the transferor court, unless it appears that the transferor court itself would not be bound by that precedent. The rule requires the transferee court to "stand in the shoes" of the transferor court so that an appellate transfer will not produce a different outcome, based on application of substantive law, than would have resulted had the case not been transferred. The transferee court is not expected to follow the transferor court's local rules or otherwise supplant its own local procedures with those of the transferor court.

Rule 47. Opinions, Publication, and Citation

47.2. Designation and Signing of Opinions; Participating Justices

(a) *Civil and Criminal Cases.* Each opinion of the court must be designated either an "Opinion" or a "Memorandum Opinion." A majority of the justices who participate in considering the case must determine whether the opinion will be signed by a justice or will be per curiam and whether it will be designated an opinion or memorandum opinion. The names of the participating justices must be noted on all written opinions or orders of the court or a panel of the court.

(b) *Criminal Cases.* In addition, each opinion and memorandum opinion in a criminal case must bear the notation "publish" or "do not publish" as determined--before the opinion is handed down--by a majority of the justices who participate in considering the case. Any party may move the appellate court to change the notation, but the court of appeals must not change the notation after the Court of Criminal Appeals has acted on any party's petition for discretionary review or other request for relief. The Court of Criminal Appeals may, at any time, order that a "do not publish" notation be changed to "publish."

(c) *Civil Cases.* Opinions and memorandum opinions in civil cases issued on or after January 1, 2003 shall not be designated "do not publish."

47.7. Citation of Unpublished Opinions

(a) *Criminal Cases.* Opinions and memorandum opinions not designated for publication by the court of appeals under these or prior rules have no precedential value but may be cited with the notation, "(not designated for publication)."

(b) *Civil Cases.* Opinions and memorandum opinions designated "do not publish" under these rules by the courts of appeals prior to January 1, 2003 have no precedential value but may be cited with the notation, "(not designated for publication)." If an opinion or memorandum opinion issued on or after that date is erroneously designated "do not publish," the erroneous designation will not affect the precedential value of the decision.

Comment to 2008 change: Effective January 1, 2003, Rule 47 was amended to prospectively discontinue designating opinions in civil cases as either "published" or "unpublished." Subdivision 47.7 is revised to clarify that, with respect to civil cases, only opinions issued prior to the 2003 amendment and affirmatively designated "do not publish" should be considered "unpublished" cases lacking precedential value. All opinions and memorandum opinions in civil cases issued after the 2003 amendment have precedential value. The provisions governing citation of unpublished opinions in criminal cases are substantively unchanged. Subdivisions 47.2 and 47.7 are amended to clarify that memorandum opinions are subject to those rules.

Rule 49. Motion for Rehearing and En Banc Reconsideration

49.5. Further Motion for Rehearing

After a motion for rehearing is decided, a further motion for rehearing may be filed within 15 days of the court's action if the court:

(a) modifies its judgment;

(b) vacates its judgment and renders a new judgment; or

(c) issues a different opinion.

49.6. Amendments

A motion for rehearing or en banc reconsideration may be amended as a matter of right anytime before the 15-day period allowed for filing the motion expires, and with leave of the court, anytime before the court of appeals decides the motion.

49.7. En Banc Reconsideration

A party may file a motion for en banc reconsideration as a separate motion, with or without filing a motion for rehearing. The motion must be filed within 15 days after the court of appeals' judgment or order, or when permitted, within 15 days after the court of appeals' denial of the party's last timely filed motion for rehearing or en banc reconsideration. While the court has plenary power, a majority of the en banc court may, with or without a motion, order en banc reconsideration of a panel's decision. If a majority orders reconsideration, the panel's judgment or order does not become final, and the case will be resubmitted to the court for en banc review and disposition.

49.8. Extension of Time

A court of appeals may extend the time for filing a motion for rehearing or en banc reconsideration if a party files a motion complying with Rule 10.5(b) no later than 15 days after the last date for filing the motion.

49.11. Relationship to Petition for Review

A party may not file a motion for rehearing or en banc reconsideration in the court of appeals after that party has filed a petition for review in the Supreme Court unless the court of appeals modifies its opinion or judgment after the petition for review is filed. The filing of a petition for review does not preclude another party from filing a motion for rehearing or en banc reconsideration or preclude the court of appeals from ruling on the motion. If a motion for rehearing or en banc reconsideration is timely filed after a petition for review is filed, the petitioner must immediately notify the Supreme Court clerk of the filing of the motion, and must notify the clerk when the last timely filed motion is overruled by the court of appeals.

49.12. Certificate of Conference Not Required

A certificate of conference is not required for a motion for rehearing or en banc reconsideration of a panel's decision.

Comment to 2008 change: Rule 49 is revised to treat a motion for en banc reconsideration as a motion for rehearing and to include procedures governing the filing of a motion for en banc reconsideration. Subdivision 49.5(c) is amended to clarify that a further motion for rehearing may be filed if the court issues a different opinion, irrespective of whether the opinion is issued in connection with the overruling of a prior motion for rehearing. Issuance of a new opinion that is not substantially different should not occasion a further motion for rehearing, but a motion's lack of merit does not affect appellate deadlines. The provisions of former Rule 53.7(b) that address motions for rehearing are moved to new subdivision 49.11 without change, leaving the provisions of Rule 53.7(b) that address petitions for review undisturbed. Subdivision 49.12 mirrors Rule 10.1(a)(5) in excepting motions for rehearing and motions for en banc reconsideration from the certificate-of-conference requirement.

Rule 50. Reconsideration on Petition for Discretionary Review

Within 60 days after a petition for discretionary review is filed with the clerk of the court of appeals that delivered the decision, the justices who participated in the decision may, as provided by subsection (a), reconsider and correct or modify the court's opinion or judgment. Within the same period of time, any of the justices who participated in the decision may issue a concurring or dissenting opinion.

(a) If the court's original opinion or judgment is corrected or modified, that opinion or judgment is withdrawn and the modified or corrected opinion or judgment is substituted as the opinion or judgment of the court. No further opinions may be issued by the court of appeals. The original petition for discretionary review is not dismissed by operation of law, unless the filing party files a new petition in the court of appeals. In the alternative, the petitioning party shall submit to the court of appeals copies of the corrected or modified opinion or judgment as an amendment to the original petition.

(b) Any party may then file with the court of appeals a new petition for discretionary review seeking review of the corrected or modified opinion or judgment, including any dissents or concurrences, under Rule 68.2.

Rule 52. Original Proceedings

52.3. Form and Contents of Petition

The petition must, under appropriate headings and in the order here indicated, contain the following:

* * *

(d) *Statement of the Case.* The petition must contain a statement of the case that should seldom exceed one page and should not discuss the facts. The statement must contain the following:

* * *

(5) if the petition is filed in the Supreme Court after a petition requesting the same relief was filed in the court of appeals:

* * *

(D) the citation of the court's opinion;

* * *

(g) *Statement of Facts.* The petition must state concisely and without argument the facts pertinent to the issues or points presented. Every statement of fact in the petition must be supported by citation to competent evidence included in the appendix or record.

* * *

(j) *Certification.* The person filing the petition must certify that he or she has reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.

(k) *Appendix.* [52.3(j) redesignated as (k), no change to rule text]

52.6. Length of Petition, Response, and Reply

Excluding those pages containing the identity of parties and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented, the signature, the proof of service, the certification, and the appendix, the petition and response must not exceed 50 pages each if filed in the court of appeals, or 15 pages each if filed in the Supreme Court. A reply may be no longer than 25 pages if filed in the court of appeals or 8 pages if filed in the Supreme Court, exclusive of the items stated above. The court may, on motion, permit a longer petition, response, or reply.

Comment to 2008 change: The reference to "unpublished" opinions in Subdivision 52.3(d)(5)(D) is deleted. The filer should provide the best cite available for the court of appeals' opinion, which may be a LEXIS, Westlaw, or other citation to an electronic medium. Subdivision 52.3 is further amended to delete the requirement that all factual statements be verified by affidavit. Instead, the filer--in the usual case of a party with legal representation, the lead counsel--must include a statement certifying that all factual statements are supported by competent evidence in the appendix or record to which the petition has cited. The certification required by subdivision 52.3(j) does not count against the page limitations.

Rule 53. Petition for Review

53.2. Contents of Petition

* * *

(d) *Statement of the Case.* The petition must contain a statement of the case that should seldom exceed one page and should not discuss the facts. The statement must contain the following:

* * *

(8) the citation for the court of appeals' opinion; and

(9) the disposition of the case by the court of appeals, including the disposition of any motions for rehearing or en banc reconsideration, and whether any motions for rehearing or en banc reconsideration are pending in the court of appeals at the time the petition for review is filed.

53.7. Time and Place of Filing

(a) *Petition.* Unless the Supreme Court orders an earlier filing deadline, the petition must be filed with the Supreme Court clerk within 45 days after the following:

(1) the date the court of appeals rendered judgment, if no motion for rehearing or en banc reconsideration is timely filed; or

(2) the date of the court of appeals' last ruling on all timely filed motions for rehearing or en banc reconsideration.

(b) *Premature Filing.* A petition filed before the last ruling on all timely filed motions for rehearing and en banc reconsideration is treated as having been filed on the date of, but after, the last ruling on any such motion. If a party files a petition for review while a motion for rehearing or en banc reconsideration is pending in the court of appeals, the party must include that information in its petition for review.

Comment to 2008 change: Subdivision 53.7(a) is amended to clarify that the Supreme Court may shorten the time for filing a petition for review and that the timely filing of a motion for en banc reconsideration tolls the commencement of the 45-day period for filing a petition for review until the motion is overruled. Subdivision 53.2(d)(8) is amended to delete the reference to unpublished opinions in civil cases. Subdivision 53.2(d)(9) is amended to require a party that prematurely files a petition for review to notify the Supreme Court of any panel rehearing or en banc reconsideration motions still pending in the court of appeals. Subdivision 53.7(b) is revised to reference this new requirement and to relocate to new Rule 49.11 those provisions governing motions for rehearing.

Rule 64. Motion for Rehearing

64.4. Second Motion

The Court will not consider a second motion for rehearing unless the Court modifies its judgment, vacates its judgment and renders a new judgment, or issues a different opinion.

Comment to 2008 change: Subdivision 64.4 is amended to reflect the Court's practice of considering a second motion for rehearing after modifying its judgment or opinion in response to a prior motion for rehearing. When the Court modifies its opinion without modifying its judgment, the Court will ordinarily deny a second motion for rehearing unless the new opinion is substantially different from the original opinion.

Rule 68. Discretionary Review With Petition

68.7. Court of Appeals Clerk's Duties

* * *

(b) *Reply.* The opposing party has 30 days after the timely filing of the petition in the court of appeals to file a reply to the petition with the clerk of the court of appeals. Upon receiving a reply to the petition, the clerk for the court of appeals must file the reply and note the filing on the docket.

(c) *Sending Petition and Reply to Court of Criminal Appeals.* Unless a petition for discretionary review is dismissed under Rule 50, the clerk of the court of appeals must, within 60 days after the petition is filed, send to the clerk of the Court of Criminal Appeals the petition and any copies furnished by counsel, the reply, if any, and any copies furnished by counsel, together with the record, copies of the motions filed in the case, and copies of any judgments, opinions, and orders of the court of appeals. The clerk need not forward any nondocumentary exhibits unless ordered to do so by the Court of Criminal Appeals.

68.9. Reply [deleted]

Rule 70. Brief on the Merits

70.3. Brief Contents and Form

Briefs must comply with the requirements of Rule 38, except that they need not contain the appendix (Rule 38.1(k)). Copies must be served as required by Rule 68.11.

Rule 71. Direct Appeals

71.3. Briefs

Briefs in a direct appeal should be prepared and filed in accordance with Rule 38, except that the brief need not contain an appendix (Rule 38.1(k)), and the brief in a case in which the death penalty has been assessed may not exceed 125 pages. All briefs must be filed in the Court of Criminal Appeals. The brief must include a short statement of why oral argument would be helpful, or a statement that oral argument is waived.

TRD-200805286
Louise Pearson
Clerk of the Court
Court of Criminal Appeals
Filed: October 1, 2008

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 10, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas

78711-3087 and must be **received by 5:00 p.m. on November 10, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Alcoa World Alumina LLC; DOCKET NUMBER: 2008-0409-AIR-E; IDENTIFIER: RN100242577; LOCATION: Point Comfort, Calhoun County; TYPE OF FACILITY: inorganic chemical manufacturing; RULE VIOLATED: 30 Texas Administrative Code (TAC) §116.115(c), Air Permit Number 8166, Special Condition (SC) Number 4, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with a maximum allowable emission rate of 0.126 pounds per million British thermal units (lb/MMBTU) for nitrogen oxide; 30 TAC §116.115(c), Air Permit Number 8166, SC Number 16D, and THSC, §382.085(b), by failing to submit results for the performance test; 30 TAC §111.111(a)(1)(B) and §116.115(c), 40 Code of Federal Regulations §60.732(b), Permit Number 8166, SC Numbers 1 and 6, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(b)(1)(H) and §116.115(b)(2)(G) and THSC, §382.085(b), by failing to include the percent of opacity in the final report; and 30 TAC §101.201(a)(1) and §116.115(b)(2)(G), Permit Number 8166, General Conditions, and THSC, §382.085(b), by failing to report the December 24, 2007 and February 3, 2008, emissions events within 24 hours of discovery; PENALTY: $96,360; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: Chemical Lime, Limited; DOCKET NUMBER: 2008-1122-AIR-E; IDENTIFIER: RN100552454; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: lime manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit (FOP) Number O-01122, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to submit the Title V deviation report; PENALTY: $2,875; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2008-0781-AIR-E; IDENTIFIER: RN100542844; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c), New Source Review (NSR) Permit Number 7799/PSD-TX-860, SC Number 1, and THSC, §382.085(b), by failing to comply with the permitted emissions limits; PENALTY: $16,450; Supplemental Environmental Project (SEP) offset amount of $6,580 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Clean School Buses; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: City of Groesbeck; DOCKET NUMBER: 2008-0612-MWD-E; IDENTIFIER: RN101613206; LOCATION: Limestone County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10182002, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for total suspended solids (TSS) and flow; PENALTY: $6,800; SEP offset amount of $5,440 applied to RC&D - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (264) 751-0335.

(5) COMPANY: Jefferson County Water Control Improvement District 10; DOCKET NUMBER: 2008-0857-PWS-E; IDENTIFIER: RN101407930; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(3) and §290.111(j)(1), by failing to issue a boil water notification and to provide notification to the executive director and the water system customers; PENALTY: $550; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Kendall County Water Control and Improvement District Number 1; DOCKET NUMBER: 2008-0523-MWD-E; IDENTIFIER: RN102837028; LOCATION: Comfort, Kendall County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010414001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for dissolved oxygen, total residual chlorine, and total phosphorous; PENALTY: $6,960; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Nand Kishore dba Lucky Stop 1; DOCKET NUMBER: 2008-0588-PST-E; IDENTIFIER: RN101549590; LOCATION: Denison, Grayson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the underground storage tanks (USTs); 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; PENALTY: $7,726; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: City of Orange; DOCKET NUMBER: 2008-0533-MWD-E; IDENTIFIER: RN101613644; LOCATION: Orange County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(9) and TPDES Permit Number WQ0010626001, Monitoring and Reporting Requirements Number 7, by failing to report an unauthorized discharge; 30 TAC §305.125(4) and (5) and TPDES Permit Number WQ0010626001, Operational Requirements Number 1 and Permit Conditions Number 2.g., by failing to prevent an unauthorized discharge; 30 TAC §305.125(5) and TPDES Permit Number WQ0010626001, Operational Requirements Number 1, by failing to properly operate and maintain the facility and all of its systems of collection, treatment, and disposal; 30 TAC §305.125(4) and (5) and TPDES Permit Number WQ0010626001, Operational Requirements Number 1, by failing to properly operate and maintain the facility and all of its systems of collection, treatment, and disposal; 30 TAC §317.3(b)(6)(B), by failing to equip the Cove Addition lift station with a forced air ventilation system for the dry well below the ground surface; 30 TAC §305.125(5) and §317.3(e)(5) and TPDES Permit Number WQ0010626001, Operational Requirements Number 1, by failing to provide an audiovisual alarm system at each lift station; 30 TAC §30.350(n) and §305.125(1) and TPDES Permit Number WQ0010626001, Other Requirements Number 1, by failing to employ a licensed operator who holds a license class equal to or higher than the category of the collection system; 30 TAC §305.125(5) and §317.3(b)(1) and TPDES Permit Number WQ0010626001, Operational Requirements Number 1, by failing to properly operate and

maintain the facility and all of its systems of collection, treatment, and disposal; 30 TAC §305.125(1) and §319.7(a) and TPDES Permit Number WQ0010626001, Monitoring and Reporting Requirements Number 3, by failing to maintain complete records of each measurement or sample taken; 30 TAC §305.125(1) and TPDES Permit Number WQ0010626001, Other Requirements Number 10, by failing to provide the TCEQ Beaumont Regional Office during September of 2005, 2006, and 2007, with a record of the date, average flow, and duration of each discharge; and 30 TAC §317.3(a), by failing to ensure that lift stations are intruder-resistant with a controlled access; PENALTY: $58,555; SEP offset amount of $46,844 applied to RC&D - Household Hazardous Clean-Up; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Manuel D. Perez; DOCKET NUMBER: 2008-0406-PST-E; IDENTIFIER: RN101784338; LOCATION: Midland, Midland County; TYPE OF FACILITY: UST; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, one UST; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(10) COMPANY: Youngmi Hwang dba R&N Valley Ranch Conoco; DOCKET NUMBER: 2008-0682-PST-E; IDENTIFIER: RN101545622; LOCATION: Irving, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system (VRS) and each current employee receives in-house Stage II vapor recovery training; 30 TAC §115.222(1) and THSC, §382.085(b), by failing to comply with the emission control requirements by failing to properly install the submerged fill tubes within six inches from the bottom of the tank; 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II VRS to onboard refueling vapor recovery compatible systems; and 30 TAC §334.49(b)(2) and the Code, §26.3475(d), by failing to electrically isolate UST system components from the corrosion elements of the surrounding soil, back fill, groundwater, and or other metallic components; PENALTY: $16,650; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Jon Stowater and James Pool dba S&P Dairy; DOCKET NUMBER: 2008-0728-AGR-E; IDENTIFIER: RN103043816; LOCATION: Hopkins County; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.33(d), by failing to obtain authorization to expand an existing animal feeding operation; and 30 TAC §321.47(h)(1)(A), by failing to cease application of wastewater to a land management unit (LMU) when extractable phosphorus levels are greater than 200 parts per million; PENALTY: $11,445; SEP offset amount of $4,578 applied to RC&D - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: Sherwin Alumina, L.P.; DOCKET NUMBER: 2008-0766-AIR-E; IDENTIFIER: RN102318847; LOCATION: Corpus Christi, San Patricio County; TYPE OF FACILITY: industrial inorganic chemical manufacturing; RULE VIOLATED: 30 TAC §§111.111(a)(4), 116.115(c), and 116.615, TCEQ Air Permit Number 48455, SC Numbers 1 and 7, FOP Number O-01489, Special Terms and Conditions (STC) Number 14, and THSC, §382.085(b), by failing to adhere to permit limitations for opacity emissions and permitted limits for particulate matter; and 30 TAC §§111.111(a)(4), 116.115(c), and 116.615, TCEQ Air Permit Number 48455, SC Number 7, FOP Number O-01489, STC Number 14, and THSC, §382.085(b), by failing to adhere to permit limitations for opacity emissions; PENALTY: $23,200; SEP offset amount of $9,280 applied to Texas A&M University-Kingsville-Air Quality Monitoring; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(13) COMPANY: The Premcor Refining Group Inc.; DOCKET NUMBER: 2008-0435-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.201(a)(1)(A) and (B), FOP Number O-01498, STC Number 2.F., and THSC, §382.085(b), by failing to report an emissions event within 24 hours of discovery; 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), NSR Permit Number 6825A/PSD-TX-49, SC Number 5.A., FOP Number O-01498, GTC, STC Number 18, and THSC, §382.085(b), by failing to maintain the Flare 22 emission rates below the allowable emission limits; 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), NSR Permit Number 6825A/PSD-TX-49, SC Number 5.A., FOP Number O-01498, GTC, STC Number 18, FOP Number O-02229, GTC, STC Number 15, and THSC, §382.085(b), by failing to maintain emission rates below the allowable emission limits; 30 TAC §101.211(c) and THSC, §382.085(b), by failing to timely report a shutdown; 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), NSR Permit Number 6825A/PSD-TX-49, SC Number 5.A., FOP Number O-01498, GTC, STC Number 18, and THSC, §382.085(b), by failing to maintain Flare 19 emission rates below the allowable emission limits; and 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), NSR Permit Number 6825A/PSD-TX-49, SC Number 5.A., FOP Number O-01498, GTC, STC Number 18, and THSC, §382.085(b), by failing to maintain the Flare 23 emission rates below the allowable emission limits.; PENALTY: $54,688; SEP offset amount of $27,344 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2008-0893-AIR-E; IDENTIFIER: RN100238385; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refinery plant; RULE VIOLATED: 30 TAC §116.715(a), Air Permit Number 39142, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $9,375; SEP offset amount of $3,750 applied to Houston-Galveston AERCO's Clean Cities/Clean

Vehicles Program; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Jantje Van Gosliga dba Vango Dairy; DOCKET NUMBER: 2008-0627-AGR-E; IDENTIFIER: RN103129680; LOCATION: Hopkins County; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §§321.31(a), 321.38(g)(2), and 321.39(b) and (b)(1), General Permit Number TXG920515, Part III. A.6(f)(6) and A.9(a)(1), and the Code, §26.121(a), by failing to maintain a minimum of two feet of storage capacity to prevent a discharge of waste and/or wastewater; 30 TAC §321.36(1), by failing to properly dispose of animal carcasses; 30 TAC §321.39(b)(4) and General Permit Number TXG920515, Part III.A.9(a)(5), by failing to properly maintain the rain gauge; 30 TAC §321.37(d) and §321.39(f) and General Permit Number TXG920515, Part III.B(4), by failing to design, construct, operate, and maintain the retention control structure to contain all wastewater; 30 TAC §305.125(1) and General Permit Number TXG920515, Part III.A.6(d), by failing to construct waste control facilities according to design specifications; 30 TAC §321.44(b) and General Permit Number TXG920515, Part III.A.5(c), by failing to sample the discharge and have it analyzed for the required parameters; 30 TAC §321.44(a) and General Permit Number TXG920515, Part IV.B.5, by failing to notify the TCEQ orally within 24 hours and in writing within 14 workings days of the discharge; 30 TAC §321.45(b) and §321.46(d) and General Permit Number TXG920515, Parts III.C.2. and IV.A, by failing to maintain complete records on-site and provide documentation for Dairy Outreach Program Area training; and 30 TAC §321.40(d) and (e), General Permit Number TXG920515, Parts III.A.11(b)(1) and III.A(d)(1), and the Code, §26.121(a), by failing to prevent a discharge of waste and/or wastewater from the LMU and by failing to minimize ponding of wastewater in the LMU; PENALTY: $9,575; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-200805267
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 30, 2008

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 10, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 10, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2007-0286-AIR-E; TCEQ ID NUMBER: RN100825249; LOCATION: 21689 Highway 35, Old Ocean, Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.201(b) and §122.143(4), Air Permit Number O-02151, Special Condition (SC) Number 2F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to create a final record for a non-reportable emissions event, within two weeks after the end of the emissions event, as reported in the December 15, 2005 deviation report; 30 TAC §115.355(1) and §122.143(4), Air Permit Number O-02151, SC Number 1A, 40 Code of Federal Regulations (CFR) §60.485(b) and THSC, §382.085(b), by failing to conduct leak detection and repair (LDAR) monitoring as documented during an investigation conducted on June 5, 2006; 30 TAC §§115.352(3), 115.782(a), 116.715(a) and 122.143(4), Air Permit Number O-02151, SC Numbers 1A and 16A, Air Permit Number 22690 and PSD-TX-751M1, SC Number 14H, and THSC, §382.085(b), by failing to adequately identify leaking components site wide from October 4, 2005 to October 20, 2005, as reported in the December 15, 2005 deviation report; 30 TAC §116.715(a), and §122.143(4), Air Permit Number 22690 and PSD-TX-751M1, SC Number 19, 40 CFR §60.18(c)(2) and THSC, §382.085(b), by failing to maintain a constant pilot flame at all times, as reported in the December 15, 2005 deviation report; 30 TAC §116.715(a) and §122.143(4), Air Permit Number 22690 and PSD-TX-751M1, SC Numbers 11 and 12B, and THSC, §382.085(b), by failing to conduct calibrations for continuous emission monitoring system, as reported in the December 15, 2005 deviation report; 30 TAC §117.206(e)(1)(A) and THSC, §382.085(b), by failing to prevent the 24-hour rolling average concentration of carbon monoxide emissions from exceeding 400 parts per million by volume at 3.0% oxygen, dry basis, on 23 furnaces in Units 22, 23 and 33, as reported in the December 15, 2005 deviation report; 30 TAC §111.111(a)(4)(A)(ii), and THSC, §382.085(b), by failing to record daily flare observations on July 21 and 22, 2005, as reported in the December 15, 2005 deviation report; 30 TAC §106.452(2)(A), and THSC, §382.085(b), by failing to prevent abrasive blasting usage from exceeding one ton per day, as reported in the December 15, 2005 deviation report; 30 TAC §106.433(7)(A) and THSC, §382.085(b), by failing to prevent volatile organic compound (VOC) emissions due to painting activities from exceeding six pounds per hour averaged over a five-hour period on July 28 and August 16, 2005, as reported in the December 15, 2005 deviation report; 30 TAC §115.782(b)(1) and THSC, §382.085(b), by failing to repair highly reactive VOC components leaking greater than 10,000 parts per million within a timely manner, as reported in the December 15, 2005 deviation report; 30 TAC §115.781(g)(1) and (2), and THSC, §382.085(b), by failing to record the times and dates on paper logs for LDAR monitoring events as reported in the December 15, 2005 deviation report; 30 TAC §122.143(4), Air Permit Number O-02151, SC Number 1A, 40 CFR §60.482-7(c)(2) and §61.242-7(c)(2) and THSC, §382.085(b), by failing to monitor 14 leaking valves in Unit 24 from September 1, 2005 to October 20, 2005, after the initial detection

of the leak as reported in the December 15, 2005 deviation report; 30 TAC §122.143(4) and §116.715(a), Air Permit Number O-02151, SC Number 16A, Air Permit Number 22690 and PSD-TX-751M1, SC Number 14F, and THSC, §382.085(b), by failing to properly monitor when conducting repairs and maintenance on 13 components site wide, as reported in the December 15, 2005 deviation report; 30 TAC §§115.354(2), 115.356(2), 115.781(a), 115.782(a), 116.715(a), and 122.143(4), Air Permit Number O-02151, SC Numbers 1A and 16A, Air Permit Number 22690 and PSD-TX-751M1, SC Number 14F, 40 CFR §60.482-7(a) and THSC, §382.085(b), by failing to monitor 488 site wide components on a quarterly basis from November 29, 2004 to December 5, 2005, as reported in the December 15, 2005 deviation report; 30 TAC §101.20(2), 40 CFR §61.346(a)(3) and (b)(1) and THSC, §382.085(b), by failing to maintain and repair seals, as reported in the December 15, 2005 deviation report; 30 TAC §122.143(4), Air Permit Number O-02151, SC Number 3(C)(iii) and THSC, §382.085(b), by failing to demonstrate that quarterly visible emissions observations of stationary vents, buildings, and other structures were conducted site wide during May 29, 2005 and June 29, 2005, as documented in the December 15, 2005 deviation report; 30 TAC §115.782(c)(2)(A)(i) and THSC, §382.085(b), by failing to conduct extraordinary repair effort within 14 days on a valve placed on delay of repair, as reported in the December 15, 2005 deviation report; 30 TAC §122.143(4), Air Permit Number O-02151, SC Number 1A, 40 CFR §60.482-7(c) and (h)(2) and THSC, §382.085(b), by failing to monitor valves which were over the 3% allowable on a quarterly basis in Unit 33, as reported in the December 15, 2005 deviation report; 30 TAC §116.715(a), and §122.143(4), Air Permit Number O-02151, SC Number 16A, Air Permit Number 22690 and PSD-TX-751M1, SC Number 23 and THSC, §382.085(b), by failing to monitor cooling tower VOC concentrations, as reported in the June 24 and December 15, 2005 deviation reports; 30 TAC §111.111(a)(4) and §122.143(4), Air Permit Number O-02151, SC Number 1A, and THSC, §382.085(b), by failing to prevent visible emissions from the flare EPN 56-61-10) from exceeding five minutes in a two-hour period on June 4, 2005, as reported in the December 15, 2005 deviation report; 30 TAC §111.143(4), Air Permit Number O-02151, SC Number 26, Alternate Means of Control (AMOC) Permit Authorization Number 2003-01, SC Numbers 5 and 13, and THSC, §382.085(b), by failing to ensure that the steam flow is within permitted limits and that prompt corrective action was taken when the alarm was activated in Unit 24 on November 20, 2005 as reported in the December 15, 2005 deviation report, and by failing to continuously supply steam to a wedge plug valve at or greater than 80 pounds per square inch gauge for one furnace EPN 24-36-9 in Unit 24 during the time period November 29, 2004 until May 19, 2005; 30 TAC §§115.352(4), 115.783(5), 116.715(a) and 122.143(4), Air Permit Number 22690 and PSD-TX-751M1, SC Numbers 3B and 14E, 40 CFR §60.482-6(a)(1) and §63.167(a)(1) and THSC, §382.085(b), by failing to seal open-ended lines in VOC service and 24 open-ended lines in hazardous air pollutants service, as reported in the December 15, 2005 deviation report; 30 TAC §§116.110(a)(4), 117.219(f)(10) and 122.143(4), Air Permit Number O-02151, SC Number 17, and THSC, §382.085(b), by failing to obtain preconstruction authorization and keep records for two portable diesel engines, as reported in the June 24, 2005 deviation report; 30 TAC §116.110(a)(4) and §122.143(4), Air Permit Number O-02151, SC Number 17, and THSC, §382.085(b), by failing to obtain authorization for abrasive blasting and painting activities being conducted at the site, as reported in the June 24, 2005 deviation report; 30 TAC §101.20(2), 40 CFR §61.356(g) and THSC, §382.085(b), by failing to record the quarterly junction box inspections, as reported in the June 24, 2005 deviation report; 30 TAC §115.216(3)(A)(i) and (iii), and THSC, §382.085(b), by failing to record the tank truck identification and leak test date during an unloading operation of a truck on November 20, 2004, as reported in the June 24, 2005 deviation report; 30 TAC §111.143(4), Air Permit Number O-02151, SC Number 26, AMOC Permit Authorization Number 2003-01, SC Numbers 7 and 9, and THSC, §382.085(b), by failing to record the steam flow in Unit 24 from June 3, 2005 to June 16, 2005, and also failed to record the steam pressure and steam flow rate for seven furnaces (EPNs 24-36-1, 24-36-2, 24-36-3, 24-36-4, 24-36-5, 24-36-6, 24-36-9) in Unit 24 from December 7, 2004 to January 31, 2005, as reported in the December 15, 2005 deviation report; 30 TAC §101.222 and §116.715(a), Air Permit Number 22690 and PSD-TX-751M1, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions and by failing to meet the demonstrations for an affirmative defense; and 30 TAC §101.222 and §116.715(a), Air Permit Number 22690 and PSD-TX-751M1, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions and by failing to meet the demonstrations for an affirmative defense; PENALTY: $168,416; Supplemental Environment Project (SEP) offset amount of $84,208 applied to Houston-Galveston Area Emission Reduction Credit Organization Clean Cities/Clean Vehicles Program; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2006-1533-AIR-E; TCEQ ID NUMBER: RN102553336; LOCATION: 13300 West Port Arthur Road, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petroleum storage tank farm; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Air Permit Number 49131, SC Number 6F, Federal Operating Permit (FOP) Number O-02715, SC Number 7A, and THSC, §382.085(b), by failing to provide the proper surface coating to storage tanks in VOC service; 30 TAC §§113.230, 115.114(a)(1) and (4), and 122.143(4), FOP Number O-02715, General Terms and Conditions (GTC) and SC Numbers 1A and 1D, 40 CFR §63.425(d) and THSC, §382.085(b), by failing to conduct timely inspections on storage tanks in VOC service; 30 TAC §106.261(a)(7) and §122.143(4), FOP Number O-02715, SC Number 7, and THSC, §382.085(b), by failing to timely submit a Permit by Rule registration form; and 30 TAC §§122.143(4), 122.145(2)(A) and (B), and 122.146(1), FOP Number O-02715, GTC and SC Numbers 9, and THSC, §382.085(b), by failing to submit a semiannual deviation report and by failing to properly certify an Annual Compliance Certification; PENALTY: $55,200; SEP offset amount of $27,600 applied to Jefferson County - Retrofit/Replace Heavy Equipment and Vehicles with Alternative Fueled Equipment and Vehicles Project; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Garland Kimbrell dba Timber We'll Take It; DOCKET NUMBER: 2006-0395-MSW-E; TCEQ ID NUMBER: RN102938321; LOCATION: 2711 114th Street, Lubbock, Lubbock County, Texas; TYPE OF FACILITY: recycling center; RULES VIOLATED: 30 TAC §328.4(b)(3)(A), by failing to recycle or transfer to a different site for recycling, at least 50% by weight or volume of each material accumulated at the beginning of the period, during each subsequent six-month period; and 30 TAC §37.921 and §328.5(c)(1) and (d), by failing to obtain financial assurance and submit a closure cost estimate to the TCEQ; PENALTY: $2,100; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3520, (806) 796-7092.

TRD-200805270

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 30, 2008

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 10, 2008.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 10, 2008.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Charlie Parrish dba Parrish Country Store; DOCKET NUMBER: 2008-0252-PST-E; TCEQ ID NUMBER: RN102490513; LOCATION: 10300 Farm-to-Market Road 409 South, Perdon, Navarro County, Texas; TYPE OF FACILITY: convenience store with out-of-service underground petroleum storage tanks; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three underground storage tanks (USTs) for which any applicable components of the system was not brought into timely compliance with the upgrade requirements; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay UST fees for Fiscal Year 1991 Quarter 2, Fiscal Year 1992 Quarter 2, Fiscal Year 1993 Quarter 2, Fiscal Year 1994 Quarter 2, Fiscal Years 1995 - 2007 and associated late fees; PENALTY: $7,875; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Duran Properties, Inc.; DOCKET NUMBER: 2008-0120-PST-E; TCEQ ID NUMBER: RN101910255; LOCATION: 400 State Highway 35, Gregory, San Patricio County, Texas; TYPE OF FACILITY: temporarily out-of-service petroleum storage tank facility; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system was not brought into timely compliance with the upgrade requirements; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0009151U for Fiscal Years 1995 - 2007; PENALTY: $23,625; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: JKY Store Inc. dba Saks Fine Cleaners; DOCKET NUMBER: 2006-1246-DCL-E; TCEQ ID NUMBER: RN103962445; LOCATION: 1319 South Voss Road, Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e) and Texas Health and Safety Code (THSC), §374.102(a), by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning facility; PENALTY: $1,185; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(4) COMPANY: Johnny Gore; DOCKET NUMBER: 2007-1601-MLM-E; TCEQ ID NUMBER: RN104806344; LOCATION: 9678 Wingfield Drive, Lumberton, Hardin County, Texas; TYPE OF FACILITY: unauthorized disposal site with burn areas; RULES VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the prohibition on outdoor burning; and 30 TAC §330.15(c), by failing to dispose of municipal solid waste at an authorized facility; PENALTY: $13,580; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200805271
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 30, 2008

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Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed

technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 10, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of the proposed S/DO are available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 10, 2008**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: NTA Enterprises, Inc. dba Lucky 7 Quick Stop; DOCKET NUMBER: 2007-1761-PST-E; TCEQ ID NUMBER: RN101536084; LOCATION: 6011 South Interstate-45 West, Corsicana, Navarro County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.51(b)(2)(B) and TWC, §26.3475(c)(2), by failing to provide spill containment equipment for the UST system; 30 TAC §334.49(c)(2)(C) and (c)(4) and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; 30 TAC §334.50(a)(1)(A), (b)(2), and (b)(2)(A)(i)(III), and TWC, §26.3475(a) and (c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances, and by failing to provide release detection for the piping associated with the USTs, and by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; and 30 TAC §334.8(c)(5)(C), by failing to ensure that all USTs are properly identified as listed on the Facility's UST registration and self-certification form by a legible tag, label, or marking that is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; PENALTY: $13,900; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200805269
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 30, 2008

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Notice of Water Quality Applications

The following notices were issued during the period of September 18, 2008 through September 29, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF MAGNOLIA has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014903001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 650,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0011871001 which expired March 1, 2008. The facility is located on the northeast corner of the intersection of Arnold Branch and Nichols Sawmill Road, approximately 1.5 miles south of the intersection of Farm-to-Market Road 1774 and Farm-to-Market Road 1488 in Montgomery County, Texas.

CITY OF TEAGUE has applied for a renewal of TPDES Permit No. WQ0010300001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 210,000 gallons per day. The facility is located near the intersection of West 11th street and Fillmore Street; approximately 4,000 feet west of the intersection of Farm-to-Market Road 80, Jackson Street and Mulberry Street in Freestone County, Texas.

GERBEN LEYENDEKKER has applied for a Major Amendment of and conversion to a Texas Pollution Discharge Elimination System individual permit, State Registration No. WQ0003259000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to expand an existing dairy cattle facility from 700 head to a maximum capacity of 999 head, of which 999 head are milking cows. The facility is located on the south side of County Road 261 approximately 3 miles east of its intersection with Farm-to-Market Road 219 in Erath County, Texas.

GULF COAST WASTE DISPOSAL AUTHORITY has applied for a renewal of TPDES Permit No. WQ0011571001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 9,250,000 gallons per day. TCEQ received this application on March 7, 2008. The facility is located at 3902 West Bay Area Boulevard on the northeast bank of Clear Creek, approximately three miles southeast of the City of Friendswood and three miles southwest of Interstate Highway 45 at the NASA One Road exit in Harris County, Texas.

LYONDELL CHEMICAL COMPANY which operates Lyondell Bayport Choate, has applied for a major amendment to TPDES Permit No. WQ0002756000 to authorize the addition of water from the flushing and testing of firefighting systems, steam condensate, Trinity River water, cooling tower blowdown, once-through cooling water, water from hydrostatic testing of new and clean equipment, water from the flushing of the potable water system, and service and potable water to Outfalls 001, 002, and 003; and the reduction of monitoring frequencies from once per day to once per week for total organic carbon, oil and grease, and pH when discharging at Outfalls 001, 002, and 003. The current permit authorizes the discharge of storm water runoff on an intermittent and flow variable basis via Outfalls 001, 002, and 003. The facility is located at 10801 Choate Road, northwest of the intersction of Bay Area Boulevard and Choate Road in the City of Pasadena, Harris County, Texas. The TCEQ Executive Director has reviewed this action

for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

SENTRY TITLE COMPANY INCORPORATED has applied for a new permit, Proposed Permit No. WQ0014845001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 19,250 gallons per day via surface irrigation of 4.23 acres of non-public access agricultural pastureland. The facility was previously permitted under Permit No. WQ0011502001 which expired December 1, 2006. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 0.5 mile west of the intersection of State Highway 90 and Farm-to-Market Road 3054 in Henderson County, Texas.

TEXAS A&M UNIVERSITY has applied for a renewal of TPDES Permit No. WQ0010968002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located on the south corner of Texas A&M University Research and Extension Center, approximately 3 miles southeast of intersection of State Highway 21 and Farm-to-Market Road 50 in Brazos County, Texas.

THE DOW CHEMICAL COMPANY which operates a brine production and hydrocarbon storage facility, has applied for a renewal of TPDES Permit No. WQ0004429000, which authorizes the discharge of storm water associated with industrial activity on an intermittent and flow variable basis via Outfalls 001 and 002. The facility is located northwest of Oster Creek along County Road 226, approximately one (1) mile west of the intersection of County Road 226 and Farm-to-Market 523 near the City of Clute, Brazoria County, Texas.

US ARMY CORPS OF ENGINEERS has applied for a renewal of Permit No. WQ0012254002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 2,500 gallons per day via total evaporation. TCEQ received this application on June 12, 2008. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located on the west side of Wilson H. Fox Park, on the south side of Granger Lake, approximately 1.5 miles north and 3 miles west of the intersection of Farm-to-Market Road 1063 and Farm-to-Market Road 1331 in Williamson County, Texas.

US ARMY CORPS OF ENGINEERS has applied for a renewal of Permit No. WQ0012254003 which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 3,700 gallons per day via evaporation. The wastewater treatment facility and disposal site are located on the east side of Wilson H. Fox Park, which is on the south side of Granger Lake, approximately 1.5 miles north and 3 miles west of the intersection of Farm-to-Market Road 1063 and Farm-to-Market Road 1331 in Williamson County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200805287
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 1, 2008

♦ ♦ ♦

Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (commission) on September 26, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Dewayne Dyer; SOAH Docket No. 582-08-1956; TCEQ Docket No. 2007-1295-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Dewayne Dyer on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200805288
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 1, 2008

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (commission) on September 26, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Peach Creek Dam and Lake Club; SOAH Docket No. 582-08-1792; TCEQ Docket No. 2006-1304-PWS-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Peach Creek Dam and Lake Club on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200805289
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 1, 2008

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Texas Superfund Registry

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), Chapter 361 to identify, to the extent feasible, and evaluate facilities which may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first registry identifying these sites was published in the January 16, 1987, issue of the *Texas Register* (12 TexReg 205). In accordance with THSC, §361.181, the commission must update the state Superfund registry annually to add new facilities in accordance with THSC, §361.184(a) and §361.188(a)(1) (see also 30 Texas

Administrative Code (TAC) §335.343) or to delete facilities in accordance with THSC, §361.189 (see also 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

In accordance with THSC, §361.188, the state Superfund registry identifying those facilities that are listed and have been determined to pose an imminent and substantial endangerment in descending order of hazard ranking system (HRS) scores are as follows.

1. Col-Tex Refinery. Located on both sides of Business Interstate Highway 20 (U.S. 80) in Colorado City, Mitchell County: tank farm and refinery.

2. J.C. Pennco Waste Oil Service. Located at 4927 Higdon Road, San Antonio, Bexar County: waste oil and used drum recycling.

3. Precision Machine and Supply. Located at 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.

4. Sonics International, Inc. Located north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.

5. Maintech International. Located at 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.

6. Federated Metals. Located at 9200 Market Street, Houston, Harris County: magnesium dross/sludge disposal, inactive landfill.

7. Niagara Chemical. Located west of the intersection of Commerce Street and Adams Avenue, Harlingen, Cameron County: pesticide formulation.

8. International Creosoting. Located at 1110 Pine Street, Beaumont, Jefferson County: wood treatment.

9. McBay Oil & Gas. Located approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.

10. Materials Recovery Enterprises. Located about four miles southwest of Ovalo, near U.S. Highway 83 and Farm Road 604, Taylor County: Class I industrial waste management.

11. Toups. Located on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105, in Sour Lake, Hardin County: fencepost treating facility and municipal waste.

12. Harris Sand Pits. Located at 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.

13. JCS Company. Located north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.

14. Jerrell B. Thompson Battery. Located north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead-acid battery recycling.

15. Spector Salvage Yard. Located at Jackson Avenue and Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.

16. Hayes-Sammons Warehouse. Located at Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.

17. Jensen Drive Scrap. Located at 3603 Jensen Drive, Houston, Harris County: scrap salvage.

18. State Highway 123 PCE Plume. Located near the intersection of State Highway 123 and Interstate Highway 35 in San Marcos, Hays County: contaminated groundwater plume.

19. Baldwin Waste Oil Company. Located on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.

20. Hall Street. Located north of the intersection of 20th Street East with California Street, north of Dickinson, Galveston County: waste disposal and landfill/open field dumping.

21. Unnamed Plating. Located at 6816 - 6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.

22. Tricon America, Inc. Located at 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.

In accordance with THSC, §361.184(a), those facilities that may pose an imminent and substantial endangerment, and that have been proposed to the state Superfund registry, are set out in descending order of HRS scores as follows.

1. Kingsland. Located in the vicinity of the 2100 and 2400 blocks of Farm-to-Market Road 1431 in the community of Kingsland, Llano County: two groundwater plumes.

2. First Quality Cylinders. Located at 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.

3. Rogers Delinted Cottonseed - Colorado City. Located near the intersection of Interstate Highway 20 and State Highway 208 in Colorado City, Mitchell County: former cottonseed delinting, processing.

4. ArChem Thames/Chelsea. Located at 13013 Conklin Lane, Houston, Harris County: chemical manufacturing and recycling.

5. Industrial Road/Industrial Metals. Located at 3000 Agnes Street in Corpus Christi, Nueces County: lead acid battery recycling and copper coil salvage.

6. Tenaha Wood Treating. Located at 275 County Road 4382, about a mile and a half south of the city limits and near the intersection of U.S. Highway 96 and County Road 4382, Tenaha, Shelby County: wood treatment.

7. Poly-Cycle Industries, Inc., Tecula. Located northeast of Tecula on the southeast corner of the intersection of Farm-to-Market 2064 and County Road 4216, Cherokee County: lead acid battery recycling.

8. Sherman Foundry. Located at 532 East King Street in south central Sherman, Grayson County: cast iron foundry.

9. Process Instrumentation and Electrical - PIE. Located at the northwest corner of 48th Street and Andrews Highway (Highway 385) in Odessa, Ector County: chromium plating.

10. James Barr Facility. Located in the 3300 block of Industrial Road, Pearland, Brazoria County: vacuum truck waste storage facility.

11. Pioneer Oil and Refining Company. Located at 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.

12. Voda Petroleum Inc. Located at 211 Duncan Street, Clarksville City, Gregg County: waste oil recycling facility.

13. Force Road Oil and Vacuum Truck Company. Located at 1722 County Road 573 (Alloy Road), approximately 1,300 feet east of the Brazoria-Fort Bend County Line, Brazoria County: oily wastewater disposal and oil recovery facility.

14. Marshall Wood Preserving. Located at 2700 West Houston Street, Marshall, Harrison County: wood treatment.

15. Avinger Development Company (ADCO). Located on the south side of Texas State Highway 155, approximately 1/4 mile east of the intersection with Texas State Highway 49, Avinger, Cass County: wood treatment.

16. Hu-Mar Chemicals. Located north of McGothlin Road, between the old Southern Pacific Railroad tracks and 12th Street, Palacios, Matagorda County: pesticide and herbicide formulation.

17. American Zinc. Located approximately 3.5 miles north of Dumas on U.S. 287 and five miles east on Farm Road 119, Moore County: zinc smelter.

18. El Paso Plating Works. Located at 2422 Wyoming Avenue, El Paso, El Paso County: metal plating.

19. Ballard Pits. Located at the end of Ballard Lane, west of its intersection with County Road 73 approximately 5.8 miles north of Robstown, Nueces County: storage and disposal of hazardous substances.

20. Cass County Wood Treating. Located at 304 Hall Street within the southeastern city limits of Linden, Cass County: wood treatment.

21. San Angelo Electrical Service Company (SESCO). Located at 926 Pulliam Street in a residential area of northeastern San Angelo, Tom Green County: electric transformer recycling.

22. Tucker Oil Refinery/Clinton Manges Oil & Refining Company. Located on the east side of U.S. Highway 79 in the rural community of Tucker, Anderson County: oil refinery.

23. Bailey Metal Processors, Inc. Located one mile northwest of Brady on Highway 87, McCulloch County: scrap metal dealer, primarily conducting copper and lead reclamation.

24. City View Road Groundwater Plume. Located northwest of the intersection of Interstate Highway 20 and State Highway 158, Midland County: groundwater contamination plume.

25. Mineral Wool Insulation Manufacturing Company. Located on Shaw Road at the northwest corner of the city limits of Rogers, Bell County: mineral wool manufacturing.

26. Woodward Industries, Inc., Nacogdoches County. Located on County 816, about 6 miles north of the city of Nacogdoches in Nacogdoches County: wood treating.

Since the last *Texas Register* publication on October 5, 2007 (32 TexReg 7120), the TCEQ has determined that one facility, Process Instrumentation and Electrical - PIE, Ector County, may pose an imminent and substantial endangerment to public health and safety or the environment, and pursuant to THSC, §361.184(a) has been added to the list of sites proposed to the state Superfund registry. No additional sites were proposed to the state Superfund registry.

Also, the commission has determined that two sites, Hicks Field Sewer Corp., Tarrant County and Shelby Wood Specialty, Inc., Shelby County no longer pose an imminent and substantial endangerment to public health or the environment and have been deleted pursuant to 30 TAC §335.344(c). Shelby Wood Specialty, Inc., Shelby County was referred to the Voluntary Cleanup program.

To date, 46 sites have been deleted from the state Superfund registry in accordance with THSC, §361.189 (see also THSC, §361.183(a) and 30 TAC §335.344): Aluminum Finishing Company, Harris County; Aztec Ceramics, Bexar County; Aztec Mercury, Brazoria County; Barlow's Wills Point Plating, Van Zandt County; Bestplate, Inc., Dallas County; Butler Ranch, Karnes County; Cox Road Dump Site, Liberty County; Crim-Hammett, Rusk County; Dorchester Refining Company, Titus County; Double R Plating Company, Cass County; Gulf Metals Industries, Harris County; Hagerson Road Drum, Fort Bend County; Harkey Road, Brazoria County; Hart Creosoting, Jasper County; Harvey Industries, Inc., Henderson County; Hicks Field Sewer Corp., Tarrant County; Hi-Yield, Hunt County; Higgins Wood Preserving, Angelina County; Houston Lead, Harris County; Houston Scrap, Harris County; Kingsbury Metal Finishing, Guadalupe County; LaPata Oil Company, Harris County; Lyon Property, Kimble County; McNabb Flying Service, Brazoria County; Melton Kelly Property, Navarro County; Munoz Borrow Pits, Hidalgo County; Newton Wood Preserving, Newton County; Old Lufkin Creosoting, Angelina County; Permian Chemical, Ector County; Phipps Plating, Bexar County; PIP Minerals, Liberty County; Poly-Cycle Industries, Ellis County; Poly-Cycle Industries, Jacksonville, Cherokee County; Rio Grande Refinery I, Hardin County; Rio Grande Refinery II, Hardin County; Rogers Delinted Cottonseed-Farmersville, Collin County; Sampson Horrice, Dallas County; Shelby Wood Specialty, Inc., Shelby County; Solvent Recovery Services, Fort Bend County; South Texas Solvents, Nueces County; State Marine, Jefferson County; Stoller Chemical Company, Hale County; Texas American Oil, Ellis County; Thompson Hayward Chemical, Knox County; Waste Oil Tank Services, Harris County; and Wortham Lead Salvage, Henderson County.

The public records for each of the sites are available for inspection and copying during regular TCEQ business hours at the TCEQ Records Management Center, Building E, North Entrance, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Handicapped parking is available on the east side of Building D, convenient to access ramps that are located between Buildings D and E. There is no charge for viewing the files; however, copying of file information is subject to payment of a fee.

TRD-200805277
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 30, 2008

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800 or (800) 325-8506.

Deadline: Semiannual Report due July 15, 2008, for Political Action Committees

Shedric M. McGill, P.O.W.E.R. PAC, 2211 Norfolk St., Ste. 210, Houston, Texas 77098-4055

Albert D. Zapanta, Citizens for a Progressive Irving, P.O. Box 630922, Irving, Texas 75063-0922

Deadline: Lobby Activities Report due July 10, 2008

Fred Maldonado, 2010 Ave. R, Rm. 138, Lubbock, Texas 79411

Zakee A. Rashid, 8590 W. Tidwell Rd., Houston, Texas 77040

Deadline: Personal Financial Statement due April 30, 2008

Patrick H. Cordero, Jr., 1603 N. Big Spring St., Midland, Texas 79701

Richard R. Nedelkoff, 702 N. Washington St., LaGrange, Texas 78945

David D. Olvera, P.O. Box 149347, Austin, Texas 78714

Leopoldo R. Vasquez III, 2337 Underwood, Houston, Texas 77030

TRD-200805275

David Reisman
Executive Director
Texas Ethics Commission
Filed: September 30, 2008

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Texas Facilities Commission

Request for Proposals #303-9-10290

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-9-10290. TFC seeks a 5 or 10 year lease of approximately 9,988 square feet of office space in Rio Grande City, Starr County, Texas.

The deadline for questions is October 17, 2008 and the deadline for proposals is October 28, 2008 at 3:00 p.m. The award date is December 17, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=78966*.

TRD-200805159
Kay Molina
General Counsel
Texas Facilities Commission
Filed: September 25, 2008

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Request for Proposals #303-9-10308

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission and the Department of Assistive and Rehabilitative Services, announces the issuance of Request for Proposals (RFP) #303-9-10308. TFC seeks a 5 or 10 year lease of approximately 20,230 square feet of office space and 4,520 square feet of warehouse space Tyler, Smith County, Texas.

The deadline for questions is October 17, 2008 and the deadline for proposals is October 30, 2008 at 3:00 p.m. The award date is December 17, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=79057*.

TRD-200805273
Kay Molina
General Counsel
Texas Facilities Commission
Filed: September 30, 2008

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Request for Proposals #303-9-10341

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services, announces the issuance of Request for Proposals (RFP) #303-9-10341. TFC seeks a 5 or 10 year lease of approximately 16,053 square feet of office space in Brownsville, Texas.

The deadline for questions is October 20, 2008 and the deadline for proposals is October 30, 2008 at 3:00 p.m. The award date is December 17, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=79058*.

TRD-200805274
Kay Molina
General Counsel
Texas Facilities Commission
Filed: September 30, 2008

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Texas Health and Human Services Commission

Notice of Adopted Medicaid Provider Payment Rates

Adopted Rates: As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) adopts a new per diem payment rate for the Truman Smith Children's Care Center in the amount of $200.80. The payment rate is adopted to be effective September 1, 2008. The Notice of Public Hearing on the adjusted rate appeared in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7348).

Methodology and Justification: The adopted rate was determined in accordance with the rate setting methodologies for the nursing facility/pediatric care facility special rate class at 1 Texas Administrative Code (TAC) §355.307(c) (relating to Reimbursement Setting Methodology); §355.101 (relating to Introduction); and §355.109 (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

TRD-200805253
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: September 29, 2008

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Department of State Health Services

Maximum Fees Allowed for Providing Health Care Information Effective October 10, 2008

The Department of State Health Services licenses general and special hospitals in accordance with the Health and Safety Code, Chapter 241. In 1995, the Texas Legislature amended the law to address the release and confidentiality of health care information. In accordance with Health and Safety Code, §241.154(e), the fee for providing a patient's health care information has been adjusted 6.2% to reflect the most recent changes to the consumer price index as published by the Bureau of Labor Statistics (BLS) of the United States Department of Labor. The BLS measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers.

Health and Safety Code, §241.154 Provisions:

(b) Except as provided by subsection (d), the hospital or its agent may charge a reasonable fee for providing the health care information and is not required to permit the examination, copying, or release of the information requested until the fee is paid unless there is a medical emergency. The fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of copies and which may not exceed $42.54; and

(A) a charge for each page of:

(i) $1.43 for the 11th through the 60th page of provided copies;

(ii) $.71 for the 61st through the 400th page of provided copies;

(iii) $.37 for any remaining pages of the provided copies; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(2) if the requested records are stored on any microform or other electronic medium, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed $64.81; and

(A) $1.43 per page thereafter; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

(C) In addition, the hospital or its agent may charge a reasonable fee for:

(1) execution of an affidavit or certification of a document, not to exceed the charge authorized by Civil Practice and Remedies Code, §22.004; and

(2) written responses to a written set of questions, not to exceed $14.40 for a set.

(D) A hospital may not charge a fee for:

(1) providing health care information under Subsection (b) to the extent the fee is prohibited under Chapter 161, Subchapter M;

(2) a patient to examine the patient's own health care information;

(3) providing an itemized statement of billed services to a patient or third-party payor, except as provided under Chapter 324; or

(4) health care information relating to treatment or hospitalization for which workers' compensation benefits are being sought, except to the extent permitted under Labor Code, Chapter 408.

This is published only as a courtesy to licensed hospitals. Hospitals are responsible for verifying that any fees charged for health care information are in accordance with the Health and Safety Code, Chapter 241.

To locate Civil Practice and Remedies Code, §22.004, go to: http://tlo2.tlc.state.tx.us/statutes/cp.toc.htm;

Health and Safety Code, Chapter 161 and Chapter 324 go to: http://tlo2.tlc.state.tx.us/statutes/hs.toc.htm; and

Labor Code, Chapter 408, to: http://tlo2.tlc.state.tx.us/statutes/la.toc.htm

Further information may be obtained by contacting the Department of State Health Services, Facility Licensing Group, 1100 West 49th Street, Austin, Texas 78756, telephone number (512) 834-6648.

TRD-200805224

Lisa Hernandez
General Counsel
Department of State Health Services
Filed: September 26, 2008

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Notice is hereby given that the public hearing originally scheduled to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Clifford Davis Elementary School, 4400 Campus Drive, Fort Worth, Texas 76119, at 6:00 p.m. on **October 8, 2008, has been cancelled**.

Notice is hereby given that the public hearing has been rescheduled to take place at Clifford Davis Elementary School, 4400 Campus Drive, Fort Worth, Texas 76119, at 6:00 p.m. on **October 28, 2008**.

The public hearing is being held in connection with an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $18,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Woodmont Apartments, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 252-unit multifamily residential rental development located at approximately the northeast corner of Oak Grove Road and Loop 820, Fort Worth, Tarrant County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941 Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200805266
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 30, 2008

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Texas Department of Insurance

Notice of Public Hearing, Open Meeting, and Extension of Time to Submit Comments

The Commissioner of Insurance held a public hearing under Docket No. 2695 at 9:30 a.m. on September 26, 2008, in Room 102 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, and an open meeting under Docket No. 2693 at 10:00 a.m. on the same date and in the same place. The hearing under Docket No. 2695 was held to consider suspending the limitations on certain rate changes pursuant to the Insurance Code §2210.359(b) and Docket No. 2693 was conducted to consider proposed manual rates for all types and classes of risks written by the Association and submitted by the Association pursuant to Insurance Code §2210.352.

Copies of the Association's proposed manual rate filing for both commercial and residential risks are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701 during regular business hours. For further information or to request copies of the filing, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference No. P-0808-15).

The Commissioner received public testimony related to considerations to suspend the rate limitations prescribed by Texas Insurance Code §2210.359(b) in Docket No. 2695.

Due to the landfall of Hurricane Ike and the devastation along the Texas coast affecting many policyholders of the Association and those that were unable to attend the public hearing and the open meeting, the Commissioner will allow written comments to be filed on Docket Nos. 2693 and 2695 until the close of business November 3, 2008. Docket Nos. 2693 and 2695 maybe access on the Department's website at http://www.tdi.state.tx.us/commish/agenda.html

Written comments on the proposals may be submitted to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104 prior to the close of business November 3, 2008. An additional copy of the comments must be submitted to J'ne Byckovski, Chief Actuary, P.O. Box 149104, MC 105-5F, Austin, Texas 78714-9104. All written comments received by the Department by the close of business November 3, 2008, will be considered by the Commissioner in rendering a decision in the pending Dockets.

TRD-200805262
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: September 29, 2008

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Legislative Budget Board

Notice of Request for Proposal

The Legislative Budget Board (LBB) announces the issuance of a Request for Proposal (LBB CJ RFP 1000) from qualified, independent firms to provide consulting services to assist the LBB in conducting objective research, analysis, and in making recommendations to evaluate the implementation of a new initiative in the State's substance abuse treatment program continuum within the criminal justice system. The successful respondent (Contractor) will be expected to begin performance of the contract, if any, on or about November 25, 2008.

Contact: Parties interested in submitting a proposal should contact Bill Parr, Assistant Director, Legislative Budget Board, 1501 N. Congress, Fifth Floor, Austin, Texas 78701, telephone (512) 463-1200, to obtain a copy of the RFP. The LBB will mail copies of the RFP only to those specifically requesting a copy. The LBB will also make this complete RFP available electronically on the Electronic State Business Daily at: http://esbd.cpa.state.tx.us and on the LBB website at http://www.lbb.state.tx.us after 10:00 a.m. CZT, on October 1, 2008.

Questions: All questions regarding the RFP must be sent via facsimile to Bill Parr at (512) 475-2902, not later than 2:00 p.m. CZT, on October 20, 2008. Official responses to questions received by the foregoing deadline will be posted electronically on the Electronic State Business Daily and the LBB website no later than October 23, 2008, or as soon thereafter as practical.

Mandatory Letters of Intent: All potential respondents must submit non-binding Mandatory Letter of Intent to Propose, which must be received in the issuing office no later than 2:00 p.m. CZT, on October 31, 2008. Only the proposals of those respondents who submit a timely Letter of Intent will be considered.

Closing Date: Proposals must be received in the issuing office at the address specified above no later than 2:00 p.m. CZT, on November 10, 2008. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedures: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The LBB will make the final decision regarding the award of a contract or contracts. The LBB reserves the right to award one or more contracts under this RFP.

The LBB reserves the right to accept or reject any or all proposals submitted. The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The LBB shall not pay for any costs incurred by any entity in responding to this Notice or RFP.

The anticipated schedule of events is as follows:

September 30, 2008--Issuance of RFP

October 20, 2008--Deadline for submission of Questions (2:00 p.m. CDT)

October 23, 2008--Release of Official Response to Questions (or as soon thereafter as practical)

October 31, 2008--**Deadline for Mandatory Letters of Intent to Propose (2:00 p.m. CDT)**

November 10, 2008--**Deadline for Submission of Proposals (2:00 p.m. CST) (Late proposals will not be considered)**

November 24, 2008--**Contract Execution (or as soon thereafter as practical)**

November 24, 2008--Commencement of Project Activities (or as soon as practical)

TRD-200805272
Bill Parr
Assistant Director
Legislative Budget Board
Filed: September 30, 2008

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Texas Lottery Commission

Instant Game Number 1139 "Lucky Dice"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1139 is "LUCKY DICE". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1139 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1139.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200, $2,000 and $20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1139 - 1.2D

PLAY SYMBOL	CAPTION
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$2,000	TWO THOU
$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $200.

H. High-Tier Prize - A prize of $2,000 or $20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1139), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1139-0000001-001.

K. Pack - A pack of "LUCKY DICE" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY DICE" Instant Game No. 1139 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LUCKY DICE" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR ROLLS play symbols to the WINNING ROLL play symbol within a GAME, the player wins the PRIZE that ROLL. If a player reveals a "7" or "11" play symbol within a GAME, the player wins the PRIZE for that ROLL instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No more than two (2) matching non-winning prize symbols will appear on a ticket.

C. No duplicate non-winning YOUR ROLL play symbols within a game.

D. No duplicate WINNING ROLL play symbols on a ticket.

E. Non-winning prize symbols will never be the same as the winning prize symbol(s).

F. The play symbols 7 and 11 (auto wins) may both appear on a winning ticket but neither one will appear more than once within a GAME.

G. A WINNING ROLL in a GAME will never match a YOUR ROLL play symbol in the other GAME.

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY DICE" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY DICE" Instant Game prize of $2,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by

the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY DICE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "LUCKY DICE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "LUCKY DICE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1139. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1139 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	643,200	12.50
$4	739,680	10.87
$5	96,480	83.33
$10	112,560	71.43
$20	48,240	166.67
$50	41,406	194.17
$200	6,499	1,237.11
$2,000	31	259,354.84
$20,000	10	804,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1139 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1139, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200805268
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 30, 2008

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Instant Game Number 1140 "Bust the Bank"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1140 is "BUST THE BANK". The play style for Game 1 is "key number match with win all". The play style for Game 2 is "key symbol match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1140 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1140.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, COIN SYMBOL, ROLL OF DOLLAR BILLS SYMBOL, FISTFUL OF MONEY SYMBOL, NECKLACE SYMBOL, DIAMOND SYMBOL, PIGGY BANK SYMBOL, STACK OF COINS SYMBOL, CLOVER SYMBOL, BOW SYMBOL, MINK SYMBOL, RING SYMBOL, STACK OF MONEY SYMBOL, $5.00, $10.00, $15.00, $20.00, $25.00, $40.00, $50.00, $100, $500, $1,000 and $50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1140 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
COIN SYMBOL	WIN ALL
ROLL OF DOLLAR BILLS SYMBOL	ROLL
FISTFUL OF MONEY SYMBOL	FISTFUL
NECKLACE SYMBOL	NKLACE
DIAMOND SYMBOL	DMND
PIGGY BANK SYMBOL	PIGBNK

STACK OF COINS SYMBOL	STACK
CLOVER SYMBOL	CLOVER
BOW SYMBOL	BOW
MINK SYMBOL	MINK
RING SYMBOL	RING
STACK OF MONEY SYMBOL	DOUBLE
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$50,000	$50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000, $5,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1140), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1140-0000001-001.

K. Pack - A pack of "BUST THE BANK" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BUST THE BANK" Instant Game No. 1140 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BUST THE BANK" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. In Game 1, if a player matches any of YOUR NUMBERS play symbols to any of the VAULT NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "coin" play symbol, the player WINS ALL 15 PRIZES! In Game 2, if a player matches any of YOUR SYMBOLS to either WINNING SYMBOL, the player wins the PRIZE shown for that symbol. If a player reveals a "stack of money" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The top prize symbol will appear on every ticket unless otherwise restricted.

C. GAME 1: No three or more matching non-winning prize symbols in this game.

D. GAME 1: No duplicate non-winning YOUR NUMBERS play symbols.

E. GAME 1: No duplicate VAULT NUMBERS play symbols on a ticket.

F. GAME 1: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

G. GAME 1: The "COIN" (win all 15) play symbol will only appear as dictated by the prize structure.

H. GAME 2: No two or more matching non-winning prize symbols in this game.

I. GAME 2: No duplicate non-winning YOUR SYMBOLS play symbols.

J. GAME 2: No duplicate WINNING SYMBOLS play symbols on a ticket.

K. GAME 2: The "STACK OF MONEY" (doubler) play symbol will only appear as dictated by the prize structure.

L. GAME 2: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

2.3 Procedure for Claiming Prizes.

A. To claim a "BUST THE BANK" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BUST THE BANK" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BUST THE BANK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BUST THE BANK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BUST THE BANK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1140. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1140 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	566,400	12.50
$10	755,200	9.38
$15	212,400	33.33
$20	188,800	37.50
$50	94,400	75.00
$100	8,142	869.57
$500	944	7,500.00
$1,000	236	30,000.00
$5,000	17	416,470.59
$50,000	8	885,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.88. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1140 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1140, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200805213
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 26, 2008

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Office of Rural Community Affairs

Request for Proposals

Rural Health Facility Capital Improvement Loan Fund for FY09

The Office of Rural Community Affairs is issuing a Request for Proposals ("RFP") for the Rural Health Facility Capital Improvement Loan Fund. The purpose of this RFP is to provide the applicant with grant funding for capital improvement projects under the endowment fund created by HB 1676.

USE OF FUNDS: Funds are awarded for a specifically defined purpose and may not be used for any other project. Funds may be used to make capital improvements to existing facilities, construct new health facilities and to purchase capital equipment, including information systems hardware and software.

AMOUNT OF AWARD: Funds are available for projects of up to $50,000. Funding will total approximately $2,100,000, depending on the amount received from the Comptroller's Office. A 10% match requirement is in effect by the applicant.

ELIGIBLE APPLICANTS: Eligible applicants include rural public and non-profit hospitals located in counties of less than 150,000 persons. Hospitals that were awarded funds from this program during FY 2008 will not be eligible to apply.

EVALUATION AND SELECTION: Applications are initially screened for eligibility and completeness. Applications that do not meet the requirements in the RFP will not be considered for review. After the initial screening, the applications will be scored by a scoring committee. The Executive Director will make a final determination.

DEADLINE: Completed applications are due by 02/27/2009. Announcement of the selected applicants will be made by 03/14/2009.

CONTRACT PERIOD: The budget period for the applications funded under this RFP will begin 04/01/2009 and continue for approximately six months.

CONTACT PERSON: To obtain the application, please contact:

Capital Improvement Fund Administrator

Office of Rural Community Affairs

P.O. Box 12877

Austin, Texas 78711

(512) 936-6701 or (800) 544-2042

email: orca@orca.state.tx.us www.orca.state.tx.us

TRD-200805212
Charles "Charlie" S. Stone
Executive Director
Office of Rural Community Affairs
Filed: September 26, 2008

♦ ♦ ♦

Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction

Acceptance of Land Donation - Bexar County

Government Canyon State Park

In a meeting on November 6, 2008, the Texas Parks and Wildlife Commission (the Commission) will consider accepting a donation of 2.5 acres in Bexar County adjacent to Government Canyon State Park. Before taking action, the Commission will take public comment regarding the proposed transaction. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us.

TRD-200805153
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: September 24, 2008

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Notice of Proposed Real Estate Transaction

Acceptance of Land - Orange County

Tony Houseman Wildlife Management Area

In a meeting on November 6, 2008, the Texas Parks and Wildlife Commission (the Commission) will consider accepting 89 acres of land in Orange County, adjacent to the Tony Houseman Wildlife Management Area (WMA) in connection with a pipeline easement through the WMA. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us.

TRD-200805154
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: September 24, 2008

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Notice of Proposed Real Estate Transaction

Land Exchange - San Saba and Lampasas Counties

Colorado Bend State Park

In a meeting on November 6, 2008, the Texas Parks and Wildlife Commission (the Commission) will consider trading 1470 foot road ease-

ment in San Saba and Lampasas Counties through Colorado Bend State Park (Park) to an adjacent landowner in return for a 1000 foot by 9100 foot conservation easement (i.e. "no build zone") along and adjacent to a portion of the Park boundary. Before taking action, the Commission will take public comment regarding the proposed transaction. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kulmann@tpwd.state.tx.us.

TRD-200805152
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: September 24, 2008

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Notice of Proposed Real Estate Transaction

Land Purchase - Yoakum County

In a meeting on November 6, 2008, the Texas Parks and Wildlife Commission (the Commission) will consider purchasing 241 acres adjacent to the Fitzgerald Ranch conservation area from the General Land Office. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us.

TRD-200805155
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: September 24, 2008

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Notice of Proposed Real Estate Transaction

Purchase of Land - Cameron County

Arroyo Colorado Wildlife Management Area

In a meeting on November 6, 2008, the Texas Parks and Wildlife Commission (the Commission) will consider the purchase of approximately 25.30 acres in Cameron County from The Valley Land Fund, Inc. as an addition to Arroyo Colorado Wildlife Management Area. Before taking action, the Commission will take public comment regarding the proposed transaction. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kulmann@tpwd.state.tx.us.

TRD-200805150
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: September 24, 2008

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Notice of Proposed Real Estate Transaction

Purchase of Land - El Paso County

Franklin Mountains State Park

In a meeting on November 6, 2008, the Texas Parks and Wildlife Commission (the Commission) will consider the purchase of approximately 1673.5 acres in El Paso County from the El Paso Water Utilities Public Service Board as an addition to Franklin Mountains State Park. Before taking action, the Commission will take public comment regarding the proposed transaction. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kulmann@tpwd.state.tx.us.

TRD-200805151
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: September 24, 2008

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Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 24, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Rapid Acquisition Company, LLC for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 36181 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the Cities of Spur and Knox City, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36181.

TRD-200805258
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 29, 2008

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Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on September 24, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Rapid Communications, LLC for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 36183 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the Cities of Hondo and Goliad, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36183.

TRD-200805259
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 29, 2008

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Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 24, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Marcus Cable Associates, LLC d/b/a Charter Communications for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 36184 before the Public Utility Commission of Texas.

The requested amended CFA service area includes portions of the City of Dallas as submitted on the service area map.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36184.

TRD-200805260
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 29, 2008

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On September 22, 2008, Globalcom, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60218. Applicant intends to reflect a change in ownership/control to Renaissance Acquisition Corp.

The Application: Application of Globalcom, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 36172.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 15, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36172.

TRD-200805216
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 26, 2008

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On September 22, 2008, Ohio First Communications, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60772. Applicant intends to reflect a change in ownership/control to Renaissance Acquisition Corp.

The Application: Application of Ohio First Communications, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 36173.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 15, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36173.

TRD-200805217
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 26, 2008

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On September 23, 2008, Quality Telephone filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60384. Applicant intends to reflect a change in its service area to include the entire State of Texas and reflect a change in ownership/control.

The Application: Application of Quality Telephone for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 36178.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 15, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36178.

TRD-200805219
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 26, 2008

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Notice of Application for Designation as a Resale Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.419

Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 25, 2008, for designation as a resale eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.419.

Docket Title and Number: Application of GTC Global Telecom, Inc. for Designation as a Resale Eligible Telecommunications Provider. Docket Number 36190.

The Application: The company is requesting ETP designation in order to be eligible to receive funds from the Texas Universal Service Fund for reimbursement of discounts provided through the Lifeline program.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by October 28, 2008. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas at 1-800-735-2989 to reach the commission's toll free number 1-888-782-8477. All comments should reference Docket Number 36190.

TRD-200805261
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 29, 2008

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 23, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Hill Country Telecommunications, LLC for a Service Provider Certificate of Operating Authority, Docket Number 36177 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, long distance, wireless and Ethernet service.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 15, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36177.

TRD-200805218
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 26, 2008

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Order Suspending Certain Rules of the Public Utility Commission

On Saturday, September 13, 2008, Hurricane Ike struck the Gulf Coast of Texas, causing significant damage in Southeast Texas. Many of the residents of this area were displaced by Hurricane Ike and have been evacuated or have relocated to other areas of Texas. Other residents remained in the area and have lost electric power and telephone service, and the delivery of other essential services has been interrupted or impaired. On September 8, 2008, Governor Perry issued a disaster proclamation relating to Hurricane Ike for specific counties in Texas. On September 12, 2008, Governor Perry issued a proclamation extending the disaster designation to additional counties. The disaster proclamations are effective September 7, 2008 and remain in effect for 30 days. Governor Perry's proclamation provides that "(all) rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident."

I. Suspension or Waiver of Rules

Pursuant to the Governor's Hurricane Ike disaster proclamations, the commission finds that strict compliance with certain of its rules would prevent, inhibit or delay necessary action in coping with the disaster. Accordingly, the commission is waiving the application of the rules listed in this order. The purpose of this action is to facilitate customers' return to the areas affected by Hurricane Ike, if that is possible, and facilitate customers' access to electric service in other areas of Texas, if they are unable to return. Pursuant to the Governor's proclamation, issued under Texas Government Code, §418.016 (Vernon 2000 & Supplement 2008), and the Commission's authority under the Public Utility Regulatory Act, including §§11.002, 14.001, 14.002, 14.005, 39.101 and 184.001 - 184.071 of the Texas Utilities Code Annotated (Vernon 2007 & Supplement 2008), the rules listed in this order are hereby suspended beginning on the date of this order, as they apply to persons who were adversely affected by Hurricane Ike (whether they have remained in those counties or evacuated to other areas of Texas as a result of the hurricane). The benefits and relief provided by this order are intended to assist those persons affected by Hurricane Ike. This order applies to residential service and non-profit entities that receive non-residential service and are providing assistance to persons who have been affected by Hurricane Ike.

Paragraph 5 applies to electric utilities providing service in the counties affected by Hurricane Ike or that have sent personnel to assist in the restoration of service in the counties affected by Hurricane Ike. These rules are waived, in recognition that (1) the utilities' priority in the wake of the hurricane is restoring service in the areas where transmission and distribution systems have been damaged or destroyed, (2) the timely reporting of performance measures may not be feasible and (3) holding the utilities accountable for some of the performance measures might impair the higher priority task of restoring service to customers who have lost it. Similarly, certain rate-filing procedures, reporting rules and performance measures are waived for telecommunications providers under paragraphs 16 - 34 to facilitate the provision of low-cost service to customers.

As used in this order, evacuate means removal under governmental authority or voluntary removal from the areas affected by Hurricane Ike. As used in this order, the counties affected by Hurricane Ike are Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Rusk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, and Washington Counties. The suspension of rules in this order, unless otherwise noted, is effective for 30 days from the date of this order.

The application of the following rules is suspended:

1. P.U.C. Substantive Rule §25.23(a) and related provisions, insofar as they would permit electric utilities to refuse electric service for failure to pay a deposit. This paragraph is effective until October 10, 2008.

2. P.U.C. Substantive Rule §25.24, insofar as it would permit electric utilities to require customers to pay an initial or additional deposit or pay a deposit to establish temporary service or permit a utility to disconnect a customer for not paying an additional deposit. This paragraph is effective until October 10, 2008.

3. P.U.C. Substantive Rule §25.29(b)(4), insofar as it would permit electric utilities to disconnect electric service of persons or master-metered apartments if they fail to pay a deposit. This paragraph is effective until October 10, 2008.

4. P.U.C. Substantive Rule §25.29, insofar as it would permit electric utilities to disconnect electric service of persons or master-metered apartments for non-payment. This paragraph is effective until October 10, 2008.

5. P.U.C. Substantive Rule §25.88, insofar as it requires electric utilities to file reports of performance measures and adopt performance plans to remedy the failure to meet performance targets. The waiver of the filing requirement applies to any electric utility or retail electric provider that is unable to meet the November 14 filing deadline for 3rd quarter of 2008 and files a letter requesting an extension. A blanket two-week extension is granted to any utility or retail electric provider that files a letter requesting an extension. An extension beyond this date may be approved by the Executive Director. The waiver of the requirement to adopt performance plans to remedy the failure to meet performance targets applies to any utility that files a letter requesting a waiver that indicates that it is in an affected area or has sent personnel to assist in the restoration of service in an affected area. Letters relating to a waiver under this paragraph shall be filed in Project Number 36150.

6. P.U.C. Substantive Rule §25.141(e), insofar as it would allow the electric service of a tenant of a central system or non-submetered, master-metered apartment house to be disconnected for nonpayment. This paragraph is effective until October 10, 2008.

7. P.U.C. Substantive Rule §25.142(d), insofar as it would allow the electric service of a tenant of an apartment house or mobile-home park utilizing electrical sub-metering to be disconnected for nonpayment. This paragraph is effective until October 10, 2008.

8. P.U.C. Substantive Rule §25.214(d) and Section 4.7.2 of the Tariff for Retail Delivery Service, insofar as they would prohibit more than three consecutive estimates of a customer's electricity consumption.

9. P.U.C. Substantive Rule §25.214(d) and Section 4.7.2.2 of the Tariff for Retail Delivery Service, insofar as they would prohibit a utility from estimating consumption after three consecutive estimates of a customer's electricity consumption has occurred.

10. P.U.C. Substantive Rule §25.214(d), Section 6.1.2.1, Charge DCS.2 and DCS.6 of the CenterPoint Tariff for Retail Delivery Service and Section 6.1.2 of the Texas-New Mexico Power Company Tariff for Retail Delivery Service, insofar as they would permit a utility to assess a charge for a priority move-in or a higher charge for a reconnection of service on the day that the request is received or on a day that is not a normal business day.

11. P.U.C. Substantive Rule §25.477(a), insofar as it would permit retail electric providers to refuse electric service for failure to pay a deposit. This paragraph is effective until October 10, 2008.

12. P.U.C. Substantive Rule §25.478(c) and (d), insofar as it would permit retail electric providers to require persons to pay a deposit or additional deposit for electric service. This paragraph is effective until October 10, 2008.

13. P.U.C. Substantive Rule §25.483(c), insofar as it would permit retail electric providers to authorize a utility to disconnect electric service of persons for non-payment. This paragraph is effective until October 10, 2008.

14. P.U.C. Substantive Rule §25.483(c), insofar as it would permit retail electric providers to authorize a utility to disconnect electric service of persons for failure to pay a deposit. This paragraph is effective until October 10, 2008.

15. P.U.C. Substantive Rule §25.483(m), insofar as it would permit a retail electric provider to charge a priority reconnection fee to a customer in the CenterPoint or Texas-New Mexico Power Company service area.

16. P.U.C. Substantive Rule §26.25(b) - (f), insofar as it would require CTUs to issue or provide bills to customers if all charges that would have been on such bill have been waived.

17. P.U.C. Substantive Rule §26.31(a)(3) and (5), insofar as it would require CTUs to provide information or notice to customers in writing.

18. P.U.C. Substantive Rule §26.32(f) and (i), insofar as it would require CTUs to obtain customer consent or provide notice in writing.

19. P.U.C. Substantive Rule §26.54(c), insofar as it would require CTUs to comply with state-wide or exchange-specific service quality and performance objectives related to installation, repair and maintenance.

20. P.U.C. Substantive Rule §26.128(e), insofar as it would require CTUs to list the names, addresses and telephone numbers of all customers and provide directories to each customer served by the CTU.

21. P.U.C. Substantive Rule §26.171(c) and (d), insofar as it would require CTUs to provide a statement of intent or notice for rate decreases.

22. P.U.C. Substantive Rule §26.207, insofar as it would require CTUs to file tariffs or provide customer notice for rate decreases or discounted services.

23. P.U.C. Substantive Rule §26.208, insofar as it would require CTUs to file tariffs or provide customer notice for rate decreases or discounted services.

24. P.U.C. Substantive Rule §26.210(c) - (g), insofar as it would require CTUs to file for approval of promotional rates and provide notice of intent to file for approval of promotional rates, impose certain requirements for promotional rates, and require notification to the public of services offered at promotional rates.

25. P.U.C. Substantive Rule §26.211(c), insofar as it would require CTUs to flexibly price services under a certain set of conditions and terms.

26. P.U.C. Substantive Rule §26.224(d), (e), (i), and (k), insofar as it would require Chapter 58 CTUs to tariff and provide notice of rate decreases, prevent service provision below cost, and establish criteria for rate decreases.

27. P.U.C. Substantive Rule §26.225(d), insofar as it would require Chapter 58 CTUs to file tariffs and provide notice of rate decreases, prohibit the provision of service below cost, and establish criteria for rate decreases.

28. P.U.C. Substantive Rule §26.226(d), insofar as it would prevent a Chapter 58 CTU from providing service below cost.

29. P.U.C. Substantive Rule §26.227(c), insofar as it would require Chapter 58 CTUs to provide informational notice filings and provide notice related to pricing flexibility and non-basic services.

30. P.U.C. Substantive Rule §26.228(d), insofar as it would require Chapter 52 CTUs to provide informational notice filings and provide notice related to pricing flexibility and non-basic services.

31. P.U.C. Substantive Rule §26.229(d), insofar as it would require Chapter 59 CTUs to provide informational notice filings and provide notice related to pricing flexibility and non-basic services.

32. P.U.C. Substantive Rule §26.467(k)(3)(A) - (B), insofar as it would require CTUs to file quarterly access line count reports and compensate each municipality no later than 45 days from the end of the preceding calendar quarter for temporary customers.

33. P.U.C. Substantive Rule §26.467(m), insofar as it would permit CTUs to recover their municipal compensation from temporary customers by passing through the municipal fees to customers.

34. P.U.C. Substantive Rule §26.468, insofar as it addresses the enforcement relating to quarterly reporting for temporary-customer lines.

It is the commission's intent that entities subject to the rules listed above notify all persons who have evacuated from affected areas as a result of Hurricane Ike who apply for electric or telecommunications service of the suspension of these rules, to the extent they may be relevant to the customer, at the time such persons apply for electric or telecommunications service. The commission notes that many of those persons who have evacuated may have limited means of identifying themselves as having been displaced from their homes due to Hurricane Ike. A person who is adversely affected by Hurricane Ike is a person who (1) resides in the zip codes listed below or in the Entergy service area in Chambers, Galveston, Orange, or Jefferson County or (2) resides in a county affected by Hurricane Ike and demonstrates that the person has been affected by, or evacuated as a result of, Hurricane Ike, based on evidence of residency in the affected area and documentation of the person's status as a claimant of benefits offered by the Federal Emergency Management Agency, the Disaster Housing Assistance Program--Ike (a program being offered by the U.S. Department of Housing and Urban Development and the Federal Emergency Management Agency), the American Red Cross or other recognized charitable organization, or a state or local jurisdiction or agency or any other evidence of hurricane-related destruction of a person's residence. However, retail electric providers are not precluded from making reasonable inquiry whether a person is entitled to the benefits of this order.

The commission further notes that P.U.C. Substantive Rule §26.31(b)(l)(A) requires customers to be informed about the dominant CTU's "lowest-priced alternatives, beginning with the least cost option." The commission also notes that the lowest-priced alternative may include Lifeline and Linkup. Telecommunications providers should seek to identify persons who are eligible for these benefits, in enrolling customers for new service. Similarly, retail electric providers should seek to identify persons who are eligible for the low-income discount, in enrolling customers for new service.

II. Retail Market Issues

Hurricane Ike has resulted in significant damage to homes and businesses in areas that are open to retail competition, particularly in Galveston and other coastal communities. This order gives CenterPoint and Texas-New Mexico Power Company greater latitude to bill for electric delivery service using estimates of consumption, rather than actual meter reads. In estimating consumption, CenterPoint and Texas-New Mexico Power Company are ordered to use their best efforts to take into account the reductions in consumption that have resulted from the disruption in delivery of electricity that are a consequence of the damage caused by the hurricane, from customers' evacuation and from the damage to the premises where customers took service. In addition, market participants will use their best efforts to develop a procedure to expedite the processing of move-ins and move-outs in the CenterPoint and Texas-New Mexico Power Company service areas.

The operation of normal electric utility billing procedures and the Electric Reliability Council of Texas (ERCOT) wholesale settlement is likely to result in retail electric providers being charged for delivery service from an electric utility and energy and capacity charges from ERCOT in connection with premises that are not actually receiving electric service. CenterPoint and Texas-New Mexico Power Company are ordered to use their best efforts, without delaying restoration of service, to identify premises that are not capable of receiving electric service, to discontinue billing these premises for electric delivery service, without assessing a disconnection charge, and to take appropriate steps to notify ERCOT that the premises should not be included in the wholesale settlement. ERCOT is ordered to take all reasonable and necessary steps to ensure that load reductions related to this disaster are reflected in the ERCOT wholesale settlement (including load profiles) as early as is practicable.

The commission may, by subsequent order, extend the suspension of some or all of the rules referred to in this order pursuant to a renewal of the state of disaster established by proclamation of the Governor on September 8, 2008.

A person who resides in one of the zip codes listed below is recognized as being adversely affected by Hurricane Ike:

77011, 77012, 77013, 77016, 77017, 77022, 77023, 77028, 77029, 77033, 77037, 77045, 77050, 77051, 77061, 77076, 77078, 77080, 77087, 77093, 77336, 77338, 77356, 77362, 77365, 77507, 77539, 77547, 77550, 77551, 77554, 77562, 77568, 77563, 77565

TRD-200805238
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 26, 2008

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The University of Texas System

Award of Amended Consultant Contract Notification

The University of Texas Health Science Center at San Antonio ("University"), in accordance with the provisions of *Texas Government Code*, Chapter 2254, entered into an amended contract for consulting services ("Contract") with The Atkins Group ("Consultant") as more particularly described in the Invitation For Offer No. 745-8-01: Invitation for Consultants to Provide Offers of Consulting Services ("Invitation"), published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2408).

Project Description: In accordance with the Invitation and Consultant's response thereto, Consultant shall provide the assistance the University requires to continue the development of a comprehensive branding strategy, including a communication and marketing plan to support the University's missions. The Consultant would perform the following services: research and assessment; and planning and development.

Name and Address of Consultant:

The Atkins Group

119 Patterson

San Antonio, Texas 78209

Total Value of Contract: $236,500.00

Contract Dates: The Contract was executed by Consultant and by University with an effective date of September 9, 2008.

Due Dates for Contract Products: The consulting services will be Marketing Strategies related to Branding the University shall be completed and delivered to University no later than December 31, 2013.

TRD-200805254
Francie A. Frederick
General Counsel to the Board of Regents
The University of Texas System
Filed: September 29, 2008

♦ ♦ ♦

Texas Water Development Board

Request for Applications for Flood Protection Planning

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) §355.3, the submission of applications leading to the possible award of contracts to develop flood protection plans for areas in Texas from political subdivisions with the legal authority to plan for and abate flooding and which participate in the National Flood Insurance Program. Flood protection planning applications may be submitted by eligible political subdivisions from any area of the State and will be considered and evaluated. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives: The purpose of the flood protection planning grant program is for the State to assist local governments to develop flood protection plans for entire major or minor watersheds (as opposed to local drainage areas) that provide protection from flooding through structural and non-structural measures as described in 31 TAC §355.2. Planning for flood protection will include studies and analyses to determine and describe problems resulting from or relating to flooding and the views and needs of the affected public relating to flooding problems. Potential solutions to flooding problems will be identified, and the benefits and costs of these solutions will be estimated. From the planning analysis, feasible solutions to flooding problems will be recommended. The flood protection planning study should also include an assessment of the environmental and cultural resources of the planning area as necessary to evaluate the flood control alternatives being considered. Solutions for localized drainage problems are not eligible for grant funding.

Description of Funding Consideration: Up to $1,000,000 has been initially authorized for Fiscal Year 2009 assistance for flood protection planning from the Board's Research and Planning Fund. Up to fifty percent funding may be provided to individual applicants, with up to seventy-five percent funding available to areas identified in 31 TAC §355.10(a) as economically disadvantaged. In the event that acceptable applications are not submitted, the Board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information: Seven double-sided copies on recycled paper and one digital copy (CD) of a complete flood protection planning grant application including the required attachments must be filed with the Board prior to 12:00 p.m., January 22, 2009. Applications can be directed either in person to David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to David Carter, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5. All potential applicants can contact the Board to obtain these rules and an application instruction sheet. Requests for information, the Board's rules and instruction sheet covering the research and planning fund may be directed to Gilbert Ward at the preceding mailing address, or by e-mail at gilbert.ward@twdb.state.tx.us or by calling (512) 463-7926. This information can also be found on the Internet at the following address: http://www.twdb.state.tx.us.

TRD-200805278
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: September 30, 2008

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Request for Applications for Regional Water and Wastewater Facility Planning

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) Chapter 355, Subchapter A, as amended, the submission of planning grant applications leading to the possible award of contracts for regional facility planning. This planning will evaluate and determine the most feasible alternatives to meet water supply and/or wastewater facility needs, estimate the costs associated with implementing feasible water supply and/or wastewater facility alternatives, and identify institutional arrangements to provide water supply and/or wastewater services for areas in Texas. In order to receive a grant, the applicant must have the authority to plan, implement, and operate regional water supply and/or wastewater facilities.

Planning grant applications may be submitted by eligible political subdivisions from any area of the state. To be eligible for funding, at least two political subdivisions must participate in the proposed study and more than one service area must be evaluated for feasibility of regional facilities. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives: *Note: Studies related to the development of regional water supply plans, the evaluation of water supply alternatives, and drought response plans, as described in Texas Water Code, §16.053, are not eligible for funding under this Request for Applications.* The purpose of this program is for the state to assist local governments to prepare plans that document water supply and/or wastewater service facility needs, identify feasible regional alternatives to meet water supply and/or wastewater facility needs, and present estimates of costs associated with providing regional water supply facilities and distribution lines and/or regional wastewater treatment plants and collection systems. The study should, at a minimum, include the following steps:

* Develop Problem Statement;

* Inventory Existing Conditions and Forecast Future Conditions and Needs;

* Formulate Planning Alternatives;

* Evaluate and Compare Each Planning Alternative; and

* Select Best Planning Alternative.

A water conservation plan and a drought management plan must be developed to ensure that existing and future sources are used efficiently and as a basis for confirming demand projections of future need. The Board's population and water demand projections will be considered in preparing projections. Discrete phases to implement regional water supply and/or wastewater facilities to meet projected needs will be identified. Environmental, social, and cultural factors for possible so-

lutions identified in the plan should be evaluated. Cost estimates will be made for each respective implementation phase to determine the capital, operation, and maintenance requirements for a 30-year planning period. Separate cost estimates will be made for each regional water supply and/or wastewater system component, including the water conservation program.

Description of Funding Consideration: Up to $1,000,000 has been initially authorized for Fiscal Year 2009 assistance for regional facility planning from the Board's Research and Planning Fund. Up to 50 percent funding may be provided to individual applicants, with up to 75 percent funding available to areas identified in 31 TAC §355.10(a) as economically disadvantaged. In the event that acceptable applications are not submitted, the Board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information: Seven double-sided copies on recycled paper and one digital copy (CD) of a complete regional facility planning grant application including the required attachments must be filed with the Board prior to 12:00 p.m., Thursday, December 18, 2008. Applications can be directed either in person to David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to David Carter, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5. All potential applicants can contact the Board to obtain these rules and an application instruction sheet. Requests for information may be directed to Kathleen Ligon at the preceding mailing address, by e-mail at kathleen.ligon@twdb.state.tx.us or by calling (512) 463-8294. More information can be found on the Internet at the following address: http://www.twdb.state.tx.us.

TRD-200805279
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: September 30, 2008

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affecte***d. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).